

**MAKING PRISON LABOR WORK:  
CAPITALISM AND CONTROL IN AMERICA'S PRISONS, 1727-1935**

by

Michael Lewis Forino

A dissertation submitted to the Faculty of the University of Delaware in Partial fulfillment of the requirements for the degree of Doctor of Philosophy in History

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*Michael Lewis Forino, September 2023, East Haddam, Conn.*

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## ABSTRACT

Prison labor in the United States has developed, survived, and thrived because reformers, politicians, and prison administrators have used it as a principal tool for institutional financial sustainability, reform, and prisoner control. The concept of imprisonment and, by extension, prison labor, emerged in the late eighteenth and early nineteenth centuries. Political and community leaders introduced it to manage the unpredictability of nascent industrialization and urbanization. Initially, prison labor was a means to curb the escalating costs of incarceration, but it soon intertwined with religious and social beliefs about productivity and industriousness. After the Civil War, contractors made prison labor become big business, driven by greed more than reform. Progressive reformers equated this practice to slavery and strived to make prison labor the standard by which one's reform progress was assessed, making prison labor *the* tool of penal reform. The attacks against for-profit prison labor came to a head in the New Deal Era. While most private contractors were expelled from the prison system, in the minds of reformers, politicians, and prison administrators, prison labor remained foundational to imprisonment and needed preservation. Alternative systems of prison labor, including state-use production

and work release, were developed in this era to keep American prisoners working. These alternative systems had limitations, especially in their ability to offset the cost of incarceration. The failure to find financially suitable alternatives and the state and federal government's refusal to outlaw prison labor ultimately led to a resurgence of for-profit prison labor in the United States. Despite drastic changes in standards of reform, control, and capital, prison labor remains a foundational feature of the prison system and the prison experience.

## INTRODUCTION—WHY DO PRISONERS WORK IN AMERICA?

It is common knowledge that, in the United States, prisoners work; "Cool Hand Luke," "I am a Fugitive from a Chain Gang," "Escape from Alcatraz," and other films and television ensure society's general awareness of the practice. However, most citizens fail to realize the scale and complexity of the system in which our convicted toil. Prison industries in the United States generate upwards of 11 billion dollars annually for products and services.<sup>1</sup> The system is vast enough that the fruits of prisoners' labor surround our everyday lives. They build many desks where our kids learn and assemble the tables where they eat lunch.<sup>2</sup> Their fingers could have sewn the shirt we wear or cobbled the shoes on our

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<sup>1</sup> Peter Wagner and Bernadette Rabuy, *Following the Money of Mass Incarceration* (Prison Policy Initiative, January 25, 2017); "Captive Labor: Exploitation of Incarcerated Workers," *American Civil Liberties Union* (2022).

<sup>2</sup> Lilah Burke, "Public Universities, Prison-Made Furniture," *Inside Higher Ed* (February 14, 2020).

feet.<sup>3</sup> Their muscles stamped our license plates and printed the signs we read in public parks.<sup>4</sup> The voice we hear on the other end of the customer helpline might be theirs, too.<sup>5</sup> The breadth of activities prisoners perform today, as well as in the past, is staggering. Prisoners worked in factories, labored on plantations, and even worked as door-to-door salespeople. Today, they make products for Wal-Mart, Victoria's Secret, and Whole Foods.<sup>6</sup>

Knowing what prisoners make is critical to understanding the prison labor system. However, the more important query is, why do they make? Why do prisoners work in the United States? This dissertation seeks to answer that question. The following pages chronicle the rise of prison labor in America and examine its importance from its colonial roots to the mid-twentieth century. Within this timeframe, a compelling continuity exists. Since the system began, social and religious reformers, prison administrators, bureaucrats, and politicians have promoted labor as beneficial to prisoners' well-being. One hundred fifty years ago, when Connecticut's prisoners wove cloth, ground grain, and made shoes, John Taylor of the Connecticut Prison Association echoed a prevalent

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<sup>3</sup> Elizabeth Paton and Andrea Zarate, "Made on the Inside, Worn on the Outside," *The New York Times*, February 21, 2019, sec. Fashion.

<sup>4</sup> Katherine Dwyer, "Inmate Wages," Research Report (Office of Legislative Research, July 30, 2018).

<sup>5</sup> Asatar P. Bair, *Prison Labor in the United States: An Economic Analysis* (New York: Routledge, 2008); "Prison Call Centers" accessed November 11, 2017, [http://www.ncpa.org/sub/dpd/index.php?Article\\_ID=299](http://www.ncpa.org/sub/dpd/index.php?Article_ID=299).

<sup>6</sup> "Captive Labor."

attitude when he professed that prison labor "...can reform prisoners by instilling discipline, good work habits, and repentance upon them."<sup>7</sup> In 2023, while Connecticut's prisoners spend their time building furniture and placards, the Department of Correction vaunts prison labor as an opportunity for inmates "...to be productive, learn new skills, be accomplished and responsible...."<sup>8</sup>

These statements suggest that prison labor withstands the currents of history and is permanent, indeed inevitable. This permanency is an illusion. The argument that prison labor is rehabilitative is one of the longest-running marketing campaigns in American history. Prison labor has neither been consistent, inevitable, nor permanent. Indeed, this dissertation's central argument is that prison labor survived and thrived because administrators, reformers, and bureaucrats used this powerful tool of punishment, control, profit, and rehabilitation flexibly to suit their given needs at any given time.

This dissertation is not the first piece of work to acknowledge the critical role of labor in shaping the carceral state. Historian Rebecca McLennan, in her influential work *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776-1941*, posits that capitalist pursuits, including the

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<sup>7</sup> Connecticut Prison Association, *Annual Report of the Connecticut Prison Association, Containing Reports of the ... Annual Meeting* (Connecticut Prison Association, 1880), 32.

<sup>8</sup> Correctional Enterprises of Connecticut, "Correctional Enterprises of Connecticut: Product Catalog" (State of Connecticut, Department of Correction, 2023).

practical application of prison labor, formed the bedrock of modern imprisonment. She contends that the attempts of reformers to render the prison labor system obsolete led to the destabilization of the prison system, resulting in what she terms the "crisis of imprisonment"—a reference to the rundown and chaotic state of twentieth-century incarceration. However, the "crisis of imprisonment" was not solely a result of external attacks on prison labor, nor was it born in the twentieth century.<sup>9</sup> This dissertation agrees with McLennan that capitalism and labor have been foundational in shaping modern imprisonment, but this foundation has always been inherently unstable, perpetually subject to change, experimentation, and disruption. Thus, this is the story of how Americans tried to wrangle that system, making prison labor work.

Our story begins in the seventeenth century when American colonists adopted European traditions of criminal justice with its focus on physical punishment as both a deterrent for crime and a potent demonstration of state power. In the late eighteenth century, we see the rise of imprisonment added to that repertoire, but not solely as a mode of punishment. There is a connection between the rise of imprisonment as a form of punishment and the development of the concept of reform. In his seminal work, *Discipline and*

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<sup>9</sup> Rebecca M. McLennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776-1941* (New York: Cambridge University Press, 2008).

*Punish: The Birth of the Prison*, Michel Foucault argued that the evolution of modern imprisonment developed within complex social mechanisms that aimed to isolate individuals deemed disruptive to societal norms.<sup>10</sup> The primary goal of this system was to discipline these individuals and ultimately instill in them a set of socially acceptable behaviors within an emerging capitalist society. Like Foucault, albeit far more grounded in reality, historian David J. Rothman, in his influential work *The Discovery of the Asylum: Social Order and Disorder in the New Republic*, argues that early religious reformers experimented with imprisonment as a mechanism to reshape deviant individuals. They endeavored to create an environment conducive to their idealized version of social and moral acceptability.<sup>11</sup>

Foucault and Rothman interpret the physical structure of the prison, as well as militaristic regimentation, as the primary tools for rehabilitation and social control. However, prison labor, the physical act of work, played an equally important role as a mode of social rehabilitation and administrative control. While neither Foucault nor Rothman discussed the use of prison labor in great detail, they both recognized the practice as an essential component of the social control aspect of imprisonment. Perhaps their most significant argument for the

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<sup>10</sup> Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Pantheon Books, 1977).

<sup>11</sup> David J. Rothman, *Conscience and Convenience: The Asylum and Its Alternatives in Progressive America* (Boston: Little, Brown, 1980).

importance of prison labor came from their clear connection between capitalism's growth and the modern prison's development. Marxist historians Georg Rusche and Otto Kirchheimer developed this idea in their 1939 book *Punishment and Social Structure*, positing that incarceration's rise directly resulted from the bourgeois class's attempt to maintain the existing social order.<sup>12</sup> Adding to this discourse, Melossi Dario and Massimo Pavarini, in their work *The Prison and the Factory: Origins of the Penitentiary System*, argued that imprisonment served as a tool to control surplus labor and as a means of capital gain. This perspective further emphasizes the intricate relationship between prison labor, social control, and capitalist economic structures.<sup>13</sup>

This dissertation acknowledges and utilizes the theoretical contributions of these earlier works while trying to ground them in the reality of everyday prison administration, life, and policy making. For example, it is undeniable that social elites established imprisonment as a form of social control. However, I dispute that a single, unified bourgeois class held complete control over imprisonment or prison labor during the nineteenth and early twentieth centuries. Instead, this study examines how various groups, including reformers,

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<sup>12</sup> Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure*, (New York: Russell & Russell, 1968).

<sup>13</sup> Dario Melossi, Massimo Pavarini, and Glynis Cousin, *The Prison and the Factory: Origins of the Penitentiary System*, First edition. edition. (London: Palgrave, 1981).

prison administrators, politicians, and prisoners, utilized prison labor to exert power. I also contend that prison labor did not result from capitalist interest alone. Its application is complex, with different individuals and groups, often with conflicting objectives, deploying it for diverse purposes at different times.

Incarceration and prison labor are inventions of perceived necessity. The first chapter, titled "The Birth of Prison Labor in America," shows this to be accurate by examining colonial punishment and the political, economic, and social circumstances that rendered incarceration and labor incompatible. The chapter incorporates insights from legal historian Lawrence Friedman's work. In his 1973 book, *A History of American Law*, Friedman posited that colonial justice systems were diverse, complex, informal, and community-based—a concept that resonates throughout this dissertation.<sup>14</sup> Community members arbitrated, negotiated, or mediated most legal, moral, or social disputes. Formal legal measures were also seldom employed in a society with limited resources. This reasoning explains the absence of imprisonment in colonial society. Considering colonial communities' small size and limited resources, imprisonment was simply not feasible.

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<sup>14</sup> Lawrence Friedman, *Crime And Punishment In American History* (New York: Basic Books, 1994); Lawrence M Friedman, *Total Justice* (New York: Russell Sage Foundation, 1985).

In the beginning, religion made imprisonment incompatible with colonial society. Most colonists and early Americans believed criminality was a product of inherited sin, an incurable affliction of the soul. Therefore, penal leaders were unwilling to make futile attempts to remedy deviants' material or spiritual condition, and no institutional structures were developed for that purpose. Instead, courts punished crimes through various simple measures such as hard labor, pecuniary fines, banishment from the community, or execution, all focused on deterring or eliminating crime, but none attempted to decrypt or cure the root causes of criminality.

Friedman posited that small community systems were a barrier to complex formal legalities, but incarceration became a vital economic and safety consideration as populations expanded. The work of legal historian William J. Novak has been significant in this regard. Novak's book *The People's Welfare: Law and Regulation in Nineteenth-Century America* (1996) explains that urbanization and immigration led social elites to advocate for state-controlled social order through modern police forces and the expansion of penal codes.<sup>15</sup> With this expansion, imprisonment was a logical next step, and practical needs to offset the cost of incarceration bore the first instances of prison labor.

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<sup>15</sup> William J. Novak, *The People's Welfare: Law and Regulation in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1996).

In the early nineteenth century, the role of labor shifted as religious reformers started to view prison labor as a means of reform.<sup>16</sup> During the Jacksonian Era, the function of prisons changed to mirror evolving perspectives on crime. Two key developments marked this shift. Firstly, the modern American prison was established as an institution that penalized criminal behavior through the loss of time. For the first time in America, a purposefully designed architectural facility encapsulated the ideology of imprisonment and the necessity for physical confinement. Secondly, religious prison reformers who believed in the potential for criminal rehabilitation emerged. These reformers viewed criminality as a result of an environment rife with pervasive sin and laziness. The practical need for prisons in the colonies and the reformers' new ideals gave rise to Connecticut's Wethersfield Prison.

Chapter 2, titled "Reformists, Reformatories, and the Reformatory Movement, 1860-1890," delves into the evolution of the American Reformatory Movement. During this period, the general understanding of crime shifted from religious dogma to a more social scientific perspective. David Rothman's pivotal work, *Conscience and Convenience: The Asylum and Its Alternatives in*

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<sup>16</sup> There is interesting work done on Shaker Communities that has strong connection with some early prisons in terms of their organization. Julie Nicoletta, "The Architecture of Control: Shaker Dwelling Houses and the Reform Movement in Early-Nineteenth-Century America," *Journal of the Society of Architectural Historians* 62, no. 3 (2003): 352–87.

*Progressive America* (1980), significantly documented this shift.<sup>17</sup> Rothman elaborated on how reformers advocated for better prison conditions, the implementation of indeterminate sentencing, and the promotion of moral and social reform.<sup>18</sup> However, evidence shows that these shifts were taking place well before the emergence of the Progressive Era.

Indeed, reformers of the early nineteenth century saw it as a valuable tool for rehabilitation. They identified idleness as a leading cause of crime; thus, prison labor emerged as the antidote to this social ill. Therefore, reformers forged a crucial carceral rhetoric that differentiated between productive and non-productive members of society. This ideology had far-reaching implications for the nature of American prisons. One of the primary objectives of these institutions evolved into isolating unproductive members from society until they were adequately reformed. Once reformed, they could rejoin the community as productive and industrious citizens. By the late nineteenth century, work programs aimed at reform through labor had been developed in almost every state and federal prison in the United States. In the North, these programs often partnered with private companies to produce goods for the market.

Chapter 3, entitled "Contractors, Administrators, and Prison Mutinies, 1865-1900," investigates the complex relationships among prison labor

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<sup>17</sup> Rothman, *Conscience and Convenience*. Page numbers?

<sup>18</sup> *Ibid.*

contractors, administrators, and prisoners. Prison administrators and contractors manipulated and exploited prison labor to their advantage, using it to maintain managerial control and for their financial gain. As the prison labor contract system expanded in scope and scale, its exploitative tendencies became more pronounced. Brutal exploitation was especially evident during the financial recession of the 1870s. During this period, contractors squeezed every possible ounce of profit from the prison labor system. Contractors achieved this at the expense of an increasingly malnourished and neglected prison population, who were exploited to the point of exhaustion to maximize productivity and profit.

Prisoners reacted to their exploitation through prison labor strikes (referred to as "prison mutinies" in the late nineteenth century). These mutinies often involved severe acts of violence and sabotage, as prisoners took extreme measures to demand improved conditions. The exact number of prison mutinies that occurred in the aftermath of the Civil War remains unknown; we only have records of those that the press reported. However, there were many less-publicized acts of prisoner resistance, too.

Some studies discuss prisoner resistance, which is invaluable. However, many cover the topic in a very cursory manner. One such example is Blake McKelvey's *American Prisons: A History of Good Intentions*, which offers a comprehensive perspective on imprisonment in the United States and sheds light on various resistance strategies employed by prisoners but does not do

much to interpret the implications or motivations of these acts.<sup>19</sup> Other works of prisoner resistance focus on the resource-rich twentieth century, such as Kelly Lytle Hernández's *City of Inmates: Conquest, Rebellion, and the Rise of Human Caging in Los Angeles, 1771-1965*, and Heather Ann Thompson's *Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy*.<sup>20</sup>

The majority of historiography on prisoner resistance is centered on the Southern lease and chain gang system. These works include Douglas Blackmon's *Slavery by Another Name*, Alex Lichtenstein's *Twice the Work of Free Labor*, Talitha L. LeFlouria's *Chained in Silence: Black Women and Convict Labor in the New South*, and David Oshinsky's *Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice*, to name a few.<sup>21</sup> Despite the limited records left by

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<sup>19</sup> Blake McKelvey, *American Prisons: A History of Good Intentions* (Montclair, N.J.: P. Smith, 1977).

<sup>20</sup> Heather Ann Thompson, *Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy* (New York: Pantheon, 2016); Heather Ann Thompson, "Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History," *The Journal of American History* 97, no. 3 (2010): 703–734; Kelly Lytle Hernandez, *City of Inmates: Conquest, Rebellion, and the Rise of Human Caging in Los Angeles, 1771-1965*. (Chapel Hill: University of North Carolina Press, 2020).

<sup>21</sup> David M. Oshinsky, *Worse than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (New York: Free Press, 1996); Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (New York: Verso, 1996); Thompson, *Blood in the Water*; Angela Y. Davis, *Abolition Democracy: Beyond Empire, Prisons, and Torture*, 1ST edition. (New York: Seven Stories Press, 2005); Angela Y Davis and Joy James, *The Angela Y. Davis Reader* (Malden, Mass.: Blackwell, 1998); Matthew J. Mancini, *One Dies, Get Another* (Columbia: University of South Carolina Press, 1996); Hernandez, *City of Inmates*; Douglas A Blackmon, *Slavery by Another Name: The Re-Enslavement of Black*

prisoners, this chapter leverages the theories proposed by James C. Scott in his book *Domination and the Arts of Resistance*. Applying Scott's concept of hidden transcripts, this chapter analyzes work release not merely as a tool imposed upon prisoners but as a system actively molded by the prisoners' resistance.<sup>22</sup> Though sometimes hidden, prison resistance in the North was profound. Indeed, the 1870s and 1880s prison mutinies were catalysts for significant reform in subsequent decades. Undeniably, prisoners played a significant role in shaping the systems that confined them.

Chapter 4, "The Fall of Contract Labor and the Rise of the Prison Labor Problem," explores the complex dynamics of prison labor in the late nineteenth and early twentieth centuries. During this period, the state-use system gradually replaced the once-dominant contract labor system, triggering a significant shift in the prison labor landscape. It is a short but crucial period not covered in the historiography of American prisons. The chapter begins by examining the forces that led to the decline of the contract labor system. Labor unions, progressive reformers, and professional criminologists and sociologists all played a role in challenging this exploitative system. Labor unions criticized the contract labor

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*People in America from the Civil War to World War II* (New York: Doubleday, 2008); Mary Ellen Curtin, *Black Prisoners and Their World : Alabama, 1865-1900* (Charlottesville: University of Virginia Press, 2000).

<sup>22</sup> James C Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven: Yale University Press, 1990).

system for undermining the integrity of America's free labor system.<sup>23</sup>

Meanwhile, reformers argued that the prison experience should focus on rehabilitation, not generating profits for private firms.

Despite these challenges, prison labor persisted, albeit in a different form. As the contract and lease systems began to wane, prison labor remained a crucial administrative control tool. From the 1890s to the 1920s, prison administrators—wardens, directors, guards, and managers—grappled with new laws that made traditional penal labor systems illegal or unworkable. This chapter pays particular attention to the situation in New York State prisons following the ban on the contract system. Rather than abandoning prison labor altogether, administrators sought to maintain it at almost any cost. Even without financial incentives, administrators assigned prisoners various tasks, such as digging ditches, quarrying rocks, or making their own socks.

Over time, prison administrators became adept at managing their prison factories without relying on outside contractors. They developed a new system of prison labor known as the state-use system. Under this system, prisoners worked in factory settings, but the goods they produced were used exclusively by state agencies and not sold on the open market. This approach met several needs: it kept prisoners busy, pacified labor unions who objected to for-profit

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<sup>23</sup> Glen Gildemeister, *Prison Labor and Convict Competition with Free Workers in Industrializing America, 1840-1890* (New York: Garland Publishing, 1987).

prison manufacturing as unfair competition, and addressed reformers' concerns about prisoner idleness.

However, the state-use system was not without its faults. One major issue was that the market for state goods was much smaller than for goods that could be sold on the open market. To keep prisoners as busy as they had been under the contract system, some administrators resorted to technological regression, shifting prison labor production to more primitive, hand-oriented systems. This allowed them to slow production output while maintaining labor input. Despite its shortcomings, the state-use system spread nationwide and continues to influence our modern prison system. For instance, the common practice of prisoners making license plates can be traced back to this system. Therefore, the importance of prison labor lay beyond mere financial gain; it was a crucial tool for administrative control and prisoner rehabilitation.

Chapter 5, titled "America Throws Them Out of Jail," delves into the underexplored topic of early twentieth-century work release in the context of prison labor. Despite its widespread application, work release has received little scholarly attention. The conventional narrative posits that work release was a product of Progressive Era experimentation. However, this narrative overlooks the fact that numerous work release programs developed without the intervention of Progressive reformers. Indeed, administrators used progressive

ideals to justify the existence of their work release programs, but the programs filled many more practical needs than ideological ones.

Work release was not a sudden twentieth-century revelation but had deep roots in older ideologies of prison labor dating back to the early nineteenth century. It suggests that work release was developed to reconcile the prison system's need for labor control with reformers' demands for rehabilitative work. Work release was introduced in smaller jails, where internal prison factories were impractical, to provide inmates with perceived labor benefits.

The development of work release programs in local and county jails was particularly timely in the early twentieth century, given the rapid growth of prison populations. Administrators, concerned with the increasing number of "idle" prisoners and limited funding, quickly adopted the progressive idea of "rehabilitation" in relation to labor. This offered financial and control benefits and did not draw the same scrutiny as the contract system. Moreover, getting inmates "out" of the local jails was seen as a way to alleviate overcrowding and poor living conditions.

Work release also had unintended consequences, particularly how it undermined its original purpose. Initially conceived as an alternative to traditional sentencing requirements, work release evolved into a supplement to punishment based on convenience and profit rather than rehabilitation. It also re-established the connection between publicly supported prisons and the

private sector. By the 1920s, work release had expanded into state prisons as a supplemental form of labor, often serving as a euphemism for older-style prison labor. Despite most states outlawing the contract system by the 1930s, for-profit prison factories were replaced with off-site "work release facilities" under the guise of progressivism.

Chapter 6, "Prison Industries Reorganization Administration and the Consequence of Failure," explores these delicate programs as they transition into the era of the Great Depression. In this period, the Federal Government became involved in attempts to stabilize the American prison labor system through regulation and direct intervention. One of the most significant efforts at intervention came in the form of a New Deal program known as the Prison Industries Reorganization Administration (PIRA). This entity was tasked with reorienting American state prison labor towards a more standardized and efficient state-use system. However, PIRA was ultimately a failure. It failed to develop a standardized plan and struggled to find a suitable state-use alternative that could compete with the prevailing contract system. In the face of their failure, PIRA inadvertently bolstered the argument that the most effective means of employing prisoners was by selling goods produced in prisons on the open market. This conclusion suggests that the officials of PIRA unintentionally paved the way for the development of an entirely new system of prison labor: the state-profit system.

This dissertation concludes with a look at how PIRA's failure to find a financially sustainable alternative to the contract system promoted the creation of a new system, which dominates both our federal and state prison systems: the state factory system. Like the old contract system, prison labor is utilized to produce goods for private markets, but contractors do not control the prison factories. Instead, these are state-run, for-profit businesses that continue to support capitalistic greed by providing companies with cheaply manufactured products using the labor of the incarcerated.

## Chapter 1

### THE ORIGINS OF PRISON LABOR IN AMERICA, 1727-1835

"When I was in jail, ye visited me."

-*Matthew, 25:36*

Reflecting on the history of prison labor in America, the penologist Louis Robinson wrote in 1931 that the relationship between work and punishment "...is as old as the story of Adam, on whom God laid the penalty of work for disobedience."<sup>24</sup> Americans' appetite for punitive work extended beyond religious dogma to societal expectations. Robinson asked, "Should the men and women confined in prison have work...?" "The man in the street..." Robinson declared, "...has no doubts about the matter: prisoners should work and work hard because they are being punished." "In other words, they believe that work is an essential part of punishment...."<sup>25</sup> While "the man" believed the practice

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<sup>24</sup> Louis N Robinson, *Should Prisoners Work? A Study of the Prison Labor Problem in the United States*, (Chicago: John C. Winston Co., 1931), i.

<sup>25</sup> Robinson, i-iii.

was natural and ancient, Robinson and most nineteenth and twentieth-century penologists, reformers, and lawmakers knew better. Indeed, prison labor is a human invention fraught with conflict and complexity. It is a tool leveraged by influential people to remedy specific social, economic, and cultural concerns of their time. Nor is the practice ancient; it is an invention of the last three centuries.

Since the establishment of this nation's first prisons, reformers, prison officials, lawmakers, capitalists, and religious leaders utilized labor as an integral tool of penal punishment, profit, and penitence. Penal labor survived and thrived because of its ability to make money and because it filled important societal expectations, became a crucial tool of control for prison administrators, and served as the means of criminal reform for religious leaders and social reformers.

Examination of New England's early criminal justice systems sheds light on the complex and often contradictory nature of prison development. During the colonial era, imprisonment as a conceptual idea was uncertain and fundamentally at odds with the prevailing social systems and values.<sup>26</sup> However,

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<sup>26</sup> The historiography of incarceration has largely ignored Connecticut. Often overshadowed by its western neighbor, Connecticut, in truth, worked in concert with New York State and served as an essential site of penal experimentation and reform in its own right. Indeed, New York's Auburn Prison is credited as the site where for-profit prison labor was invented in the United States. Still, Connecticut actually superseded New York in this regard by nearly a century. In the eighteenth century, Connecticut was among the earliest American colonies to establish a state prison with the intention of being fully financially

this incompatibility began to wane in the late eighteenth century, in the aftermath of the American Revolution. As mercantile markets expanded, urban areas grew, and the seeds of industrialization were sown, the circumstances for the birth of the prison were ripe.

The emerging prison system placed a heavy emphasis on personal accountability. This period saw the development of a deeply ingrained American ideal that criminals should "pay" for their crimes through both time incarcerated and penal labor. This belief was symbolic and implemented in tangible ways, as illustrated by Connecticut's Old New-Gate Prison. Playing a pivotal role in the early history of incarceration, Old New-Gate Prison served a dual purpose. On one hand, it acted as a model for control and discipline, setting a precedent for future penal institutions.

On the other hand, it was one of the country's first institutions to enforce a penal labor program. Prisoners paid for their crimes through time lost and by bearing the cost of their incarceration through labor (retribution and recompense). This dual role of Old New-Gate Prison illustrates the complex interplay of societal values, economic factors, and penal ideologies in the early stages of the American criminal justice system.

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independent through prison labor. Many of the shifts from labor as punishment, to labor as financial gain, to labor as reform, took place across the country, albeit at different rates and at different times. Connecticut serves as a harmonious example of how these ideas took hold and evolved.

In the eighteenth century, there was a paradigm shift in the perception of criminality, which occurred when Enlightenment thinkers and religious leaders began to advocate for criminality as a treatable condition rather than an inherent biological ailment. This shift in perspective transformed the principal use of prison labor from a method primarily used for retribution and recompense into a tool for reform. Louis Dwight, a leading prison reformer, and his Prison Discipline Society (PDS) embodied this new ideology. Dwight was a strong advocate for the construction of rehabilitative prisons nationwide. He envisioned these institutions as places where labor, education, and religion would be the primary means for reforming prisoners in America. Dwight and PDS's recommendations had long-term consequences for American incarceration as the PDS-Auburn style prisons they recommended remained the standard until at least the 1880s.

The construction of the Wethersfield Prison in Connecticut was a near-perfect embodiment of Dwight's ideal prison model. A thorough analysis of Wethersfield reveals that by the 1840s, labor had become the dominant tool of control and rehabilitation in American prisons. This shift underscores the profound transformation of the prison systems during this era, signaling a move towards a more reformatory and rehabilitative approach to punishment through labor, a system that remained undisputed until the 1880s.

## ***Retribution and Recompense***

Prisons as we know them today—the hulking and intimidating edifices that amputate society's unwanted appendages from a healthy body—did not exist in Colonial America. However, colonists were aware of imprisonment in theory and from biblical tradition. Variations of the prison existed in ancient Babylonia, Egypt, Greece, Israel, Persia, Rome, and later Medieval Europe.<sup>27</sup> Prisons of the Ancient World served many purposes, but among their commonalities was the infliction of suffering as a deterrent for crime. The Philosopher Plato described this deterrence model best when he wrote of imprisonment in 525 AD. "They who have been guilty of the worst crimes and are incurable, they get no good themselves, but others get good when they behold them enduring forever the most terrible and painful and fearful sufferings as the penalty of their sins—there they are, hanging up in the prison house of the world below just as examples, a spectacle and warning to all unrighteous men who come thither."<sup>28</sup> The deterrence model remained the staple of European punishment. The brutal treatment of the body was a

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<sup>27</sup> Norval Morris and David J. Rothman, *The Oxford History of the Prison: The Practice of Punishment in Western Society* (New York: Oxford University Press, 1995), 1-42.

<sup>28</sup> Plato, *Gorgias, Menexenus, Protagoras*, ed. Malcolm Schofield, trans. Tom Griffith, Cambridge Texts in the History of Political Thought (Cambridge, UK: Cambridge University Press, 2010).

spectacle that put fear in the hearts of would-be criminals, reinforcing the State's power.<sup>29</sup>

European traditions of public displays of corporal punishment began to wane in the mid-eighteenth century as the concept of imprisonment became increasingly popular. Colonial Americans did not follow suit; they lacked the significant infrastructure to house convicts for long periods. Therefore, colonials used jailing sparingly, and magistrates primarily reserved the practice for defendants, dissenters, debtors, and deserters.<sup>30</sup> Those who managed to find themselves incarcerated were held in the cellars of ecclesiastical meeting houses or abandoned ships docked in the harbor.<sup>31</sup> Colonial authorities did not consider imprisonment as punishment. Instead, it was a tool of control in the truest sense: temporarily holding individuals until trials began, debts paid, or political dissent recanted.

Even with imprisonment as a tool in the arsenal, colonial authorities were reluctant to use the power of incarceration. It was often a last resort, even for ordinary, albeit serious crimes like defaulting on debt.<sup>32</sup> For example, the

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<sup>29</sup> Foucault, *Discipline and Punish*.

<sup>30</sup> Adam Jay Hirsch, *From Pillory to Penitentiary: The Rise of Criminal Incarceration in Early Massachusetts* (Ann Arbor: Michigan Law Review Association, 1982).

<sup>31</sup> W. Branch Johnson, *The English Prison Hulks*. (London: C. Johnson, 1957); Janet Semple, *Bentham's Prison: A Study of the Panopticon Penitentiary* (Oxford: Oxford University Press, 1993).

<sup>32</sup> Friedman, *Crime And Punishment In American History*.

Connecticut Colony's Ludlow's Code sought to strike a balance between the need to maintain social order and the desire to avoid the harshness of imprisonment. The Code acknowledged that while indebtedness was a severe offense that warranted punishment, it also recognized the potential for alternative means of reparation. The clause stating that "no person shall be...imprisoned for any debt or [fine] if the law can find any competent means of satisfaction otherwise from his estate..." underscores this point.<sup>33</sup> Rather than immediately resorting to imprisonment, the law proposed that other means of compensation should be explored first. This could involve seizing assets or property from the offender's estate to repay the debt or fine. This approach suggests an early recognition of the potential negative impacts of imprisonment.

Even without a history of incarceration to base their fears, colonial authorities were deeply concerned about the negative potential jailing of debtors. A mix of practical and economic reasoning drove this concern. Most local communities were small and tightly knit. The imprisonment of a local merchant or blacksmith who owed money could disrupt these communities'

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<sup>33</sup> Connecticut, "The Code of 1650: Being a Compilation of the Earliest Laws and Orders of the General Court of Connecticut: Also, the Constitution, or Civil Compact, Entered into and Adopted by the Towns of Windsor, Hartford, and Wethersfield in 1638-9." (Hartford, Silas Andrus, 1822), University of Connecticut Archives.

social and economic fabric.<sup>34</sup> More importantly, the colonials were intensely frugal and did not want to bear the financial burden of incarcerating people or even dragging them through a court proceeding.<sup>35</sup> The State of early jails is a testament to this Yankee frugality. In New York City, the first holding jail, built in 1658, was a small wooden structure with a thatched roof constantly in disrepair. It was not until 1733 that lawmakers voted to replace the dilapidated structure.<sup>36</sup> The Ludlow Code also encapsulates this reluctance to invest in infrastructure. It stated that if a person's estate could not settle their debt, the debtor would bear the cost of their imprisonment.<sup>37</sup> Early codes set a crucial precedent in and beyond Connecticut: avoiding the cost of incarceration would be a vital consideration for American prisons moving forward.<sup>38</sup>

Colonial leaders tailored their legal practices to suit the needs of individual communities. Historian Lawrence Friedman aptly encapsulated this idea by stating, "There were as many colonial systems as there were colonies..."<sup>39</sup> The only common thread among these systems was the attempt to

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<sup>34</sup> "An Act to Prevent the Unnecessary Journeying of the Members of the General Court," October 2, 1753, Digital Collections, The National Archives London.

<sup>35</sup> Ibid.

<sup>36</sup> "Petition from the Sheriff, Jailor, and Keeper of the City Goal, for Better Accommodations.," 1692, Digital Collections, New York Historical Society.

<sup>37</sup> Charles Jeremey, *The Public Records of the Colony of Connecticut*, vol. 6, 1717.

<sup>38</sup> *The Book of the General Laws for the People within the Jurisdiction of Connecticut*, Collected out of the Records of the General Court, 1672, The National Archives London, Digital Collections.

<sup>39</sup> Friedman, *Crime And Punishment In American History*.

provide colonists with a semblance of stability in an inherently unstable society.<sup>40</sup> Stability was closely tied to the protection of private property since one's holdings were central to survival and social mobility in colonial society. As a result, most colonial laws were designed to protect private property rights.<sup>41</sup> For instance, the Connecticut Assembly passed the "Body of Liberties" in 1642, which protected many private property rights.<sup>42</sup> The Massachusetts Body of Liberties (1641) shielded colonists against unlawful seizure of property,<sup>43</sup> while the Virginia Act of 1705 ensured that transferring property would not prevent a debtor from settling.<sup>44</sup> The Colonial Laws of New York (1725) prohibited the unlawful construction of structures on private property.<sup>45</sup> In this context, the idea of spending valuable resources to construct a facility to house criminals and societal outcasts was absurd. It was entirely at odds with the colonial ethos of

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<sup>40</sup> Ibid.

<sup>41</sup> James W. Ely, "The Origins of Property Rights: The Colonial Period," in *The Guardian of Every Other Right: A Constitutional History of Property Rights*, ed. James W. Ely (New York: Oxford University Press, 2007).

<sup>42</sup> Connecticut State Library, "The Body of Liberties, 1642," 1929, Records of the Colony of Connecticut, The Connecticut State Archive.

<sup>43</sup> William H Whitmore, ed., *The Body of Liberties: The Colonial Laws of Massachusetts, 1660* (Boston: Rockwell and Churchill, 1890).

<sup>44</sup> Colony of Virginia, *An Act for Suppressing Outlying Slaves*, 1705.

<sup>45</sup> Colony of New York, Governor Council, *An Act Restricting the Construction of Structures on Private Property*, 1734.

protecting private property since building jails would require additional tax on private property.<sup>46</sup>

Punishments for infractions against private property, including theft, rape, vandalism, and murder, were focused on retribution and compensation. Public penalties such as shaming, tarring and feathering, stocking, whipping, and, in extreme cases, public execution were intentional spectacles.<sup>47</sup> They demonstrated the power of the government and the dangers associated with breaking the law. Preacher Increase Mather (son of Cotton) exemplified this approach when he declared at the hanging of two murderers that "...death shall be put upon them and they will go down quick into hell."<sup>48</sup> In Mather's society, there was no room for salvation.

These public punishments were practical tools to deter potential offenders. Given colonial communities' small and tight-knit nature, transgressions and public punishments were especially shameful. The potential for such indignity often deterred many crimes. Courts and local authorities also subjected transgressors to financial recompense to make the offended whole.

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<sup>46</sup> James W. Ely, "The Origins of Property Rights: The Colonial Period," in *The Guardian of Every Other Right: A Constitutional History of Property Rights*, ed. James W. Ely (New York: Oxford University Press, 2007).

<sup>47</sup> Duke of York, *An Act for the Further Prevention of Theft*, 1664.

<sup>48</sup> Increase Mather, *The Wicked Mans Portion: A Sermon Preached at the Lecture in Boston in New England the 18th Day of the 1 Month 1674. When Two Men Were Executed, Who Had Murthered Their Master* (Boston: Printed by John Foster, 1675).

These punishments were immediate and cheap, making them ideal for colonies defined by their close social ties and lack of resources.

Imprisonment as a punishment also did not align with mainstream social norms in colonial New England, where religious and social leaders often dictated legal decisions based on Puritan traditions.<sup>49</sup> Many Christians believed people were born criminals and would always remain so. This belief did not support the idea that criminality was a curable ailment. Therefore, there were no theological or social benefits to spending resources on a facility to reverse criminal behavior. Imprisonment remained a theoretical concept until the early eighteenth century. It was costly and had no inherent advantage since religious dogma held that reforming criminals was impossible. Moreover, communities were small and self-policing, making public shaming and corporal punishment effective deterrents.<sup>50</sup> However, the penal philosophy that the convicted should "pay" for their crimes through labor, developed in the sixteenth and seventeenth centuries, persisted.

### ***The Workhouse, Debtor's Prisons, and the Introduction of Labor as Punishment***

In the 1720s, the circumstances that rendered imprisonment incompatible with colonial society's economic, social, and theological underpinnings shifted. Prisons—the physical apparatus that can hold and separate undesirable individuals—proved an increasingly popular option for

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<sup>49</sup> *New England Primer*, May 3, 1646.

<sup>50</sup> Foucault, *Discipline and Punish*.

social, political, and religious leaders. In larger communities, self-policing tactics, interpersonal accountability, public shaming, and the legal system's role as a mediator of individual relationships became challenging to realize.<sup>51</sup> While these tools were influential in the small, tight-knit towns of New England, they did not have the same impact in growing trade ports such as New Haven or urban centers such as Hartford, let alone New York or Boston.<sup>52</sup> In these places, relationships between offender and offended did not always exist before a transgression. In a society where someone could commit a crime and then disappear into the urban environment or on an outbound ship, how could the community ensure that the offender would not re-offend or simply move their criminal activities elsewhere? The development of urban jails throughout the eighteenth century tells us that the answer became to hold offenders and isolate them from society.<sup>53</sup> The same was valid for strangers awaiting trial, even for misdemeanor crimes. If accused of a crime, what mechanism existed to ensure that strangers did not flee before trial? In a small community, the bonds

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<sup>51</sup> William J Novak, *The People's Welfare: Law and Regulation in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1996).

<sup>52</sup> Richard Ross, "Crime and Law Enforcement in Colonial New York City," in *Authority In Colonial America* (Chicago: University of Chicago Press, 1980); Mitchel P. Roth, *Crime and Punishment: A History of the Criminal Justice System*, 2nd ed. (Australia: Wadsworth/Cengage Learning, 2011); Micah L. Issitt, *Law Enforcement in America*, Opinions throughout history (Amenia, New York: Grey House Publishing, 2021).

<sup>53</sup> Blake McKelvey, *American Prisons: A History of Good Intentions* (Montclair, N.J.: P. Smith, 1977).

between its members helped ensure this. Only holding the accused in prison would do in a society of strangers. Another important question was if an individual caused financial harm to another, how could the legal system ensure that the victim was made whole? The answer was to hold the offender in prison until they paid.

That latter answer led directly to the eighteenth-century development of debtor's prisons: institutions that held those who owed a debt that they failed to pay. Supporters of these early prisons had a two-pronged approach. First, more respectable citizens who were not "flight risks" could leave the jail during the day to pursue their regular occupations, and they would return to spend the nights in jail.<sup>54</sup> For less respected or more likely strangers, i.e., vagrants, immigrants, and transients, community leaders looked across the Atlantic to the Elizabethan workhouses, where authorities rounded up the destitute and vagrant and compelled them to support their forced board with farming, weaving, and other types of labor.<sup>55</sup> They looked to the English prison hulks, where convicts produce hand goods in the bowels of decommissioned naval ships.<sup>56</sup> Urban authorities used these as models to build an American workhouse

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<sup>54</sup> John Howard, *The State of the Prisons in England and Wales: With Preliminary Observations and an Account of Some Foreign Prisons and Hospitals* (England, 1777).

<sup>55</sup> Keith Wrightson and David Levine, *Poverty and Piety in an English Village: Terling, 1525-1700* (Oxford: Oxford University Press, 1995).

<sup>56</sup> W. Branch Johnson, *The English Prison Hulks*. (London: C. Johnson, 1957).

jail.<sup>57</sup> Under this system, prison keepers compelled convicted criminals to perform a variety of handy crafts while confined to ensure they paid their debts and offset the cost of their incarceration.

The result was the workhouse jail, the earliest American penal institution that formally connected punishment and labor. Drawing on its Puritan and Protestant traditions of hard work as a path to godliness, Connecticut was the earliest colony to establish a workhouse jail, having passed legislation to construct such a facility in 1727.<sup>58</sup> Built three years later in New Haven, this punitive work institution was the first in the colonies.<sup>59</sup> It was a specific-built "...for restraining, correcting, suppressing, and punishing rogues, vagabonds, common beggars, and other frauds, dissolute, profane, and disorderly persons, and for setting them to work." Not only was the New Haven workhouse the first institution to formalize penal labor, but it was also the first to see that system's power fall into the hands of a single individual. The General Assembly granted

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<sup>57</sup> The term "workhouse jail" refers to a uniquely American institution that combined the traits of a debtor prison and the Elizabethan workhouse into a single institution.

<sup>58</sup> Max Weber, *The Protestant Ethic and the Spirit of Capitalism*. (New York: Scribner, 1958).

<sup>59</sup> Charles Jeffrey, "An Act for Restraining, Correcting, Suppressing and Punishing Rogues, Vagabonds, Common Beggars, and Other Lewd, Idle, Dissolute, Profane and Disorderly Persons; and for Setting Them to Work," in *Connecticut Records of the Colony of Connecticut, 1726-1735*, vol. 7, n.d.; Charles Jeffrey, "Act for the Relieving of Idiots and Distracted Persons," in *Connecticut Records of the Colony of Connecticut, 1689-1706*, vol. 4, n.d.

the power to compel prisoners to the "Master of the House of Corrections," the earliest professional warden in the nation.<sup>60</sup>The master had the full power to put the offender to work hard and use physical punishments such as fettering and whipping to compel them.

While an early example, the New Haven Workhouse was not unique for long. It represented the start of a rapidly growing trend in the construction of workhouses, debtors' prisons, and houses of corrections throughout the Northeast's urban centers. By the 1780s, community leaders established similar institutions in Philadelphia (the Walnut Street Jail), Hartford (the Sykes Street Jail), Providence (Providence Jail), New York City (Rikers Island and Bidwell), and Boston (Charlestown Island and Stone Jail) and others.<sup>61</sup>

Legislators who pushed to establish workhouse jails did so to ensure the convicted paid their debts.<sup>62</sup> More critically, prisoners needed to work to offset the cost of their incarceration. In the late eighteenth century, the precise nature of the convict pool made this challenging to realize. Finding suitable employment for workhouse jail prisoners was tricky because the terms of conviction were

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<sup>60</sup> Ibid.

<sup>61</sup> Adam Jay Hirsch, *The Rise of the Penitentiary: Prisons and Punishment in Early America* (New Haven: Yale University Press, 1992); Michael Stephen Hindus, *Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767-1878* (Chapel Hill: University of North Carolina Press, 1980).

<sup>62</sup> Ben Mutschler, *The Province of Affliction: Illness and the Making of Early New England, American Beginnings, 1500-1900* (Chicago, IL: University of Chicago Press, 2020).

short. Violent crimes, which would necessitate longer sentences, were still punished through corporal means, not jailing.

Moreover, security and supervision protocols were not stringent. Wardens were rarely full-time and had their daily occupations. If prisoners did not simply up and leave jail, they could bribe underpaid guards, break out of the insecure facility never to return, or not do the work. As a result, the workhouse jail consisted of an unstable and unreliable labor pool.

In this transitory environment, finding convict work opportunities was challenging. Nevertheless, even if the master of the House of Corrections made arrangements with a local artisan or manufactory, the number of prisoners available to perform labor was limited. Part of the problem was that workhouse jails were local, drawing prisoners only from the urban center to which they were adjacent.<sup>63</sup> Finally, the biggest threat to the longevity of the workhouse jails came down to costs. Inconsistency of labor contracts with the cost of upkeeping the facility made the workhouse jail a losing financial proposition for all parties involved. For example, not only was the New Haven Workhouse consistently unable to produce enough funds to pay the debts of its convicts, but it also needed allocation from the colonial assembly for expenses almost every

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<sup>63</sup> Jeffrey, "Act for the Relieving of Idiots and Distracted Persons"; Jeffrey, "An Act for Restraining, Correcting, Suppressing and Punishing Rogues, Vagabonds, Common Beggars, and Other Lewd, Idle, Dissolute, Profane and Disorderly Persons; and for Setting Them to Work."

year that it was in operation.<sup>64</sup> In addition, through their criminal activity, convicts were burdens on their community; now, they cost money to house and feed, too.

### ***America's Newgate, Consolidation, and Self-Sufficiency***

Connecticut lawmakers wanted the workhouse jails to be financially self-sufficient, but this was not easy to realize. The Connecticut Assembly's solution was consolidation, so they put labor agreements between local jails and artisans on hold. Prisoners serving short sentences would remain in local jails, hopefully working their regular daily occupations. Offenders with longer sentences, a prisoner category proliferating with the expansion of penal codes, would be consolidated into a centrally located state prison. A larger, stabler, and more efficient labor pool attracted more contractors to agree to use prison labor, and this experiment proved successful. New-Gate was Connecticut's first state prison, a direct evolution of the workhouse jail.<sup>65</sup> Like the workhouse jail, New-Gate's tool for convicts to "pay" for their crimes was labor, but this concept became abstracted, focused not on the relationship between offender and

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<sup>64</sup> Richard Harvey Phelps, *Newgate of Connecticut: Its Origins and Early History. Being a Full Description of the Famous and Wonderful Simsbury Mines and Caverns, and the Prison Built Over Them. to Which Is Added All the Incidents, Insurrections, and Massacres, Connected with Their Use as a Prison for the Tories During the Revolution. Also. an Illustrated Description of the State Prison at Wethersfield* (American Publishing Company, 1876).

<sup>65</sup> Connecticut's New-Gate is always spelled with a hyphen, likely to distinguish it from England's Newgate Prison.

offended but between the offender and the State. "Payment" through labor was no longer made to an individual for whom the convicted owed money but to the State itself to subsidize the cost of incarceration.<sup>66</sup>

Consolidating Connecticut's workhouse jail prisoners at New-Gate was not a clear path. New-Gate's story began on the western slope of Talcott Mountain in central Connecticut at a place known as the Simsbury Mine, a copper repository tapped by colonists in 1705. Over the following decades, thousands of linear feet of human-made cavern wormed through the mountain as miners scoured for the semi-precious material used to strike coinage.<sup>67</sup> A trifecta of haste, necessity, and cruelty drove the mine's use post-1776.<sup>68</sup> That year, the Colony of Connecticut purchased the largely deserted and abandoned

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<sup>66</sup> The State founded New-Gate with the intent of it being a financially self-supporting institution, four decades before the infamous Auburn Prison of New York created the same type of system. New-Gate was also important because it firmly established labor as the dominant tool of punishment, a trend that would continue into the nineteenth century.

<sup>67</sup> Richard Harvey Phelps, *Newgate of Connecticut: Its Origins and Early History. Being a Full Description of the Famous and Wonderful Simsbury Mines and Caverns, and the Prison Built Over Them. To Which Is Added All the Incidents, Insurrections, and Massacres Connected with Their Use as a Prison for the Tories During the Revolution. Also. An Illustrated Description of the State Prison at Wethersfield* (American Publishing Company, 1876).

<sup>68</sup> "Account Allowed by the Committee of Safety for the Town of Simsbury," 1776, Town of Simsbury, Connecticut Historical Society.

mine and "converted" it to a prison to hold Tories and Continental Army deserters, whom burglars and counterfeiters soon joined.<sup>69</sup>

Following the conclusion of the Revolutionary War, the site was primed to become the State of Connecticut's first Prison and was officially named New-Gate in 1781 to impart the violent reputation of the infamous English jail of the same name. However, Connecticut's New-Gate did not need its namesake's notoriety. Keepers at New-Gate subjected their prisoners to the most arduous labor and unimaginable cruelty. The wartime assembly chose the site because military officers could easily convert its shafts into makeshift containment cells, and its past use as a copper mine facilitated the first state—sponsored penal labor project. The wardens of New-Gate forced convicts to mine copper in the same shafts they resided for sale on the open market.

Operating under the assumption that deterrence was the best method against crime, the General Assembly designed New-Gate as an institution of fear and punishment. In May of 1781, a group of "unhappy and distressed petitioners" co-authored a letter to the Connecticut Legislature decrying their conditions. They described their confines as "...dark and gloomy [with] no allowance made for [their] wants." "The sick have no attention given to them and are suffering every day." The prison is crowded...and provisions are not

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<sup>69</sup> "An Act Against Counterfeiting Bills of Public Credit, Coins, or Currency," 1750, Digital Collections, The National Archives London.

sufficient." We are all in the most deplorable condition." "We beg the Honorable Assembly...to remove us to some other place."<sup>70</sup> A female visitor from Boston described the site with horrifying detail. Looking down vertical ventilation shafts tens of meters deep, she could see men and women together huddled on makeshift bedding. It was a place, she said, that was "...next to impossible to escape the caverns". This supposition seems correct; New-Gate was so horrendous that many prisoners went to desperate lengths to escape successfully, including shimmying up the vertical shafts that she described.<sup>71</sup> Prisoner escapes were common at New-Gate and, more often than not, involved using the tools given to prisoners to mine the tunnels. For example, in July of 1812, William Loomis and Amos Hodge escaped by digging a tunnel underneath the exterior prison wall with the shovels and picks assigned to them.<sup>72</sup>

The Reverend John Tyler, who visited the prison in 1786, wrote that the conditions of New-Gate were "dismal and loathsome," with there being inadequate light and ventilation. The prisoners were almost always "kept in Irons."<sup>73</sup> In 1807, Edward Augustus Kendall described Newgate disparagingly. He

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<sup>70</sup> Prisoners of Newgate, "Letter to the Connecticut General Assembly," May 2, 1781, Connecticut State Archives.

<sup>71</sup> John Tyler, "John E. Tyler Journal," April 14, 1796, John E. Tyler Papers, Series 1, Box 6, Folder 6, Connecticut State Archives.

<sup>72</sup> "Escape of the New-Gate Prisoners," *The Connecticut Courant*, July 13, 1812; "New-Gate Escape," *The New York Evening Post*, July 6, 1812.

<sup>73</sup> Tyler, "John E. Tyler Journal."

wrote that, at all times, guards were "... in readiness to fire. The prisoners were heavily ironed and secured by both handcuffs and fetters..." As a result, "...[prisoners] were unable to walk, could only make their way by jump or short hop." He concluded that "[Newgate] is designed to be... an object of terror..." and it "...is continued to make life as burdensome and miserable as possible." "In accordance with these ideals, the place chosen for the prison is none other than the mouth of a forsaken copper mine...."<sup>74</sup> *The Hartford Weekley Times* reported in August of 1823 that the many attempts to escape New-Gate directly resulted from the harsh conditions.<sup>75</sup> Another article states, "The Prison is...the most wretched abode that human beings are ever condemned to inhabit. The cells are dark and dismal, the atmosphere pestilential, and the prisoners are chained and confined like felons under the most rigorous penal discipline."<sup>76</sup> It was not just outsiders that described the conditions. In 1803, the prisoner Charles Prentice wrote that New-Gate "Was a place of torment" where prisoners "were chained like dogs." "The prisoners at Newgate," he continued, "are treated in the most cruel and barbarous manner, and many of them have been murdered by the

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<sup>74</sup> Edward Augustus Kendall, *Travels Through the Northern Parts of the United States, in the Years 1807 and 1808*. (New-York: I. Riley, 1809), 211.

<sup>75</sup> "The Prisoners at Newgate," *Hartford Weekley Times*, August 31, 1823.

<sup>76</sup> "New-Gate Prison," *The Connecticut Courant*, October 9, 1827.

treatment which they have received."<sup>77</sup> These are many such accounts of New-Gate's horror.

Whoever made prisoners mine for copper must not have considered why mining companies abandoned it in the 1760s. The most accessible copper was gone, leaving the hard-to-reach ore behind. The work was slow and challenging, and unprofessional financial management by a Revolutionary War captain named Roger Viets rendered the mining operation unsustainable. Copper mining was not enough to render New-Gate financially self-sufficient as the General Assembly members had hoped. However, despite the unsustainability of the penal copper mine, the relationship between hard labor and punishment remained important moving forward. Soon, copper mining was supplemented with other work. In 1788, the Methodist minister Jesse Lee wrote, "The prisoners were obliged to work, and some of them worked very hard. They were forced into labor, such as breaking stones, sawing, and splitting wood, and working in the blacksmith's shop. They were under the care of a keeper, who could punish them if they were disobedient or lazy. I saw several of them at work, and they appeared to be industrious and willing."<sup>78</sup> Visitor Samuel Jarvis wrote that the

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<sup>77</sup> Charles Prentice, "Letter to the Editor of the Connecticut Courant," May 10, 1826, Records of the Connecticut State Prison, Series 2, Box 7, Folder 5, Connecticut State Archives.

<sup>78</sup> Jesse Lee, Letter to Dr. Coke, May 20, 1788, in "The Life and Times of Jesse Lee," ed. Abel Stevens (New York: Carlton & Porter, 1857), 186-187.

prisoners seemed "to be diligent and obedient" in their labors.<sup>79</sup> Benjamin Chapin, a former inmate at New-Gate, wrote, "We were employed in various kinds of labor, such as breaking stones, making nails, sawing wood, and working in the blacksmith's shop. We were under the direction of a keeper, who had the power to punish us if we were idle or refractory. I worked hard and was glad to have something to do to pass away the time."<sup>80</sup> The former inmate Joshua King expressed a similar sentiment, writing, "The work was hard and tedious, but it helped to pass the time."<sup>81</sup> In an effort to expand the diversity of work, the State constructed workshops for cooperage, wagon building, nail production, and other job work. A wheat farm was also established, as well as grain grinding via the earliest use of a treadwheel in America.

### ***Labor as a Tool of Punishment and Control***

Prison labor at New-Gate formed first from the convenience of location, but policymakers' dreams of financial self-sufficiency sustained it. In 1803, the "Act for the Establishment of a State Prison" was updated to include the

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<sup>79</sup> Samuel Jarvis, Diary, October 20, 1787, in "The Connecticut Prison Association and the Newgate Prison," ed. Carlos Smith (Hartford: Case, Lockwood & Brainard, 1876), 11-12.

<sup>80</sup> Benjamin Chapin, "Memoir of Benjamin Chapin," in "The Connecticut Prison Association: And the Newgate Prison," ed. Carlos Smith (Hartford: Case, Lockwood & Brainard, 1876), 20-21.

<sup>81</sup> Joshua King, "Memoir of Joshua King," in "The Connecticut Prison Association and the Newgate Prison," ed. Carlos Smith (Hartford: Case, Lockwood & Brainard, 1876), 34-35.

provision that "the profits arising from the labor and industry of the convicts, together with such other sums as may from time to time be appropriated by the General Assembly for that purpose, shall be sufficient to defray all the expenses of the prison."<sup>82</sup> Work also came to play critical administrative functions, specifically in prisoner control. The case of New-Gate provides us with explicit evidence that labor became prison administrators' most crucial tool for punishment and control. The keepers at Newgate utilized technologies such as the treadwheel for this specific purpose. The English engineer William Cubitt (1785-1861) was the father of the treadwheel. Cubitt was known as one of the chief engineers of the Crystal Palace in 1851. Cubitt's treadwheel was a simple device modeled off ancient machines that converted human and animal energy into mechanical power, often for milling grain. Despite its use for milling, Cubitt was evident in his intentions that his device was an efficient means to reduce prisoners' idleness (inactivity) and all the unruly habits associated with bored prisoners.<sup>83</sup> He wrote that the treadwheel could "...reform offenders by teaching them habits of industry."<sup>84</sup> Cubitt's treadwheel, while cruel, was not an anomaly.

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<sup>82</sup> "An Act for the Establishment of a State Prison," in *Acts and Laws of the State of Connecticut, in America* (Hartford: Hudson and Goodwin, 1803), 82-83.

<sup>83</sup> William Hone, *The Every-Day Book and Table Book* (London: T. Tegg, 1841).

<sup>84</sup> William Roscoe, *Observations on Penal Jurisprudence and the Reformation of Criminals: With an Appendix, Containing the Latest Reports of the State-Prisons Or Penitentiaries of Philadelphia, New-York, and Massachusetts, and Other Documents* (T. Cadell and W. Davies and J. and A. Arch, 1819), 182; *The Sixth Report of the Committee of the Society for the Improvement of Prison Discipline*

Prison reformers of the late eighteenth century who ascribed to the Enlightenment philosophy that criminals could be molded and cured had already begun thinking of creative means to utilize labor in those reformation endeavors. Among the most prominent thinkers was Jeremy Bentham, who proposed his famous Panopticon prison as a rational, efficient penal manufactory.<sup>85</sup> Bentham's factory, like Cubitt's treadwheel, was meant to subsidize the cost of incarceration while instilling a work ethic among the convicted. While labor as a means of reform was widely debated in eighteenth-century England, the tenets of the practice permeated in the United States faster than across the Atlantic. While English prison reformers experimented with labor in the period, the practice did not become official policy until the Prison Act of 1865, when Parliament mandated hard work for convicted criminals.<sup>86</sup>

On the other hand, Connecticut mandated hard labor for the convicted through law as early as 1781 when Newgate became the state prison. The treadwheel found its way to Connecticut early on via Captain Roger Viets in 1811, who, along with the other early administrators of Newgate, found the

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*and for the Reformation of Juvenile Offenders*, Goldsmiths'-Kress Library of Economic Literature (London: J. and A. Arch, 1824); Society for the Improvement of Prison Discipline in Scotland, *Address by the Committee of Directors of the Society for the Improvement of Prison Discipline in Scotland, to Their Subscribers, and to the Public of Scotland Generally* (Scotland: Neill & Company, 1835).

<sup>85</sup> Arthur Griffiths, *The Chronicles of Newgate*, (London: Chapman and Hall, 1844).

<sup>86</sup> Great Britain, Parliament, *The Prison Act of 1865*, 1865.

treadwheel an indispensable tool for punishment and control. John Viets echoed Cubitt's original intent when he wrote that of all the prison labor, "...that treadwheel is dreaded the most" and was most generally "...sufficient to subdue the most refractory in a very short time."<sup>87</sup> Viets subjected anyone who acted out to the cruelty of the treadwheel. In several cases, even the "ladybirds," the nickname given to New-Gate's female inmates, were shackled to the machine after they had exhibited some rebellious behavior. The treadwheel was an effective tool of punishment and a significant deterrence against unwanted behavior, but it was also an essential tool of physical control by simultaneously restraining and exhausting the most dangerous or uncooperative inmates.

Since prisoners used their legs to power the treadwheel, their hands or necks could be affixed to the mechanism's grab handles or the ceiling via chains; Viet tells us that it was customary that the "most dangerous inmates" were shackled in this way.<sup>88</sup> Edward Augustus Kendall, who visited New-Gate in the early nineteenth century, painted the bleakest of portraits of the treadwheel, recounting that the prisoners pumping their legs to keep up were fastened to the ceiling "with irons around their necks."<sup>89</sup> Another advantage the treadwheel

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<sup>87</sup> John Viets, "Journal," c 1800, Department of Corrections, Wethersfield Prison, Connecticut State Archives.

<sup>88</sup> Ibid.

<sup>89</sup> Kendall, *Travels Through the Northern Parts of the United States, in the Years 1807 and 1808.*, 210.

offered prison administrators lay in its efficiency of control, namely the ability for one guard to control an indefinite number of individuals shackled to the device. Since the treadwheel was a single-stepped barrel, the prisoners shackled to the machine needed to keep up with the set pace or risk the barrel and the grinders, crushing them to death.<sup>90</sup> If guards shackled fifteen prisoners to a single treadwheel, that prison could use whipping and other forms of physical punishment to keep up the pace of work. The result was punishment, exhaustion, control, and a bit of grain.

### ***Self-Salvation and the Ability to Change***

Prisons and jails of the late eighteenth and early nineteenth centuries were transitional institutions. They were novel because they facilitated imprisonment as a form of punishment. However, they waded into Old-World traditions of brutal and excessive punishment, as is clear from the case of New-Gate. In this era, hard labor existed to bolster prisons' hostile environment and enhance the severity of incarceration. Under this mentality, the Connecticut General Assembly designed New-Gate in 1781 as an intentionally intolerable institution. Fear was a tool of deterrence.<sup>91</sup> If citizens feared America's New-Gate enough to stop them from breaking the law, then legislators believed their job

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<sup>90</sup> *The Operative Mechanic, and British Machinist: Being a Practical Display of the Manufactories and Mechanical Arts of the United Kingdom* (Knight and Lacey, 1825).

<sup>91</sup> Phelps, *Newgate*, 1860

was complete. However, the deterrence model did not work, at least to the degree hoped. It turns out prisoners do not respond well to repeated abuse. Prison riots related to poor living conditions and a harsh working environment were common. In 1781, for instance, a group of 21 prisoners killed a guard and escaped the grounds.<sup>92</sup>

Despite the horrid conditions of New-Gate and other similarly brutal institutions that sprung up, prison populations continued to rise into the early nineteenth century across industrializing America. Were the countless droves of unfortunate citizens at the terminus of an early American justice system destined to rot in the depths of a forsaken copper mine? Not everyone thought so. Convinced that the system did not work as intended, a burgeoning group of reformers questioned the fate of those undeterred. The teachings of the Second Great Awakening, which emphasized individual salvation, and Enlightenment penal philosophy, which advocated for more humane treatment of criminals, inspired these reformers. They were less concerned with hedging potential criminality through deterrence but focused on improving the horrendous environment in which American prisoners found themselves.

Theology helped promote the concept of personal salvation and, by extension, the ability to change the course of their life. Flying in the face of older

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<sup>92</sup> *Connecticut Courant*, May 29, 1781.

religious and social ideas of predestination and social stagnation, religious leaders advocated for education and training as a path toward personal growth. This thinking was vital for new penology in the early nineteenth century because it suggested that education and training could reform prisoners and that crime resulted from factors other than inherited sin. Imprisonment and labor of this era became issues of penitence and reform rather than separation and punishment. Among New England's most influential religious leaders to embody and disseminate these ideas was Horace Bushnell (1802-1876) of Hartford, Connecticut. While Bushnell was not a prison activist per se, he professed a belief that human nurture had more power than nature and that one's upbringing had a profound impact on the road their life took. Bushnell was also a strong proponent that individuals could spiritually develop through Christian education, which had profound significance in reform through discipline and teaching. Bushnell's teachings helped support two essential ideas. First, the environment caused crime rather than biological or spiritual inheritance. Second, proper training, environmental conditions, and instruction could reverse and cure criminality.<sup>93</sup>

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<sup>93</sup> Horace Bushnell, *Christian Nurture* (New York: Armstrong & Co., 1876); "A Review of the Rev. Horace Bushnell's Discourse on the Slavery Question, Delivered in the North Church, Hartford, January 10, 1839.", 48.

Some reformers explicitly addressed criminality and the possibility of carceral reform. Asa Mahan wrote in 1835, "The aim of all penal legislation should be to reform the criminal, to restore him to a healthy moral state, so that he may become a good citizen...It is the ability to reform, to turn from the error of his ways, that distinguishes man from the brute."<sup>94</sup> Likewise, Theodore Weld, in a speech, said, "The criminal has not been outlawed from the human family. He is still a man, and he has the elements of character which, if properly directed, would enable him to discharge every obligation of society...it is wrong to give up any man as irredeemable."<sup>95</sup> The social reformer Dorothea Dix wrote, "Shut out from the light and the healing influences of society and herded with the vilest and the worst, the criminal is sometimes left to perish... The belief that reformation is impossible, where circumstances are very adverse, is a fallacious one."<sup>96</sup> The ability to salvage and reform was in front. William Lloyd Garrison wrote, "Let us endeavor to reclaim the guilty from a life of crime."<sup>97</sup>

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<sup>94</sup> Asa Mahan, "Thoughts on Penal Legislation," in *The Western Messenger*, vol. 3, no. 1 (1835), 41-47.

<sup>95</sup> Theodore Weld, "The Criminal," in *American Slavery As It Is: Testimony of a Thousand Witnesses* (1839), 398-406.

<sup>96</sup> Dorothea Dix, "Appeal to the Public on the Subject of Prison Discipline," in *Memorial Soliciting a State Hospital for the Protection and Cure of the Insane, Submitted to the Legislature of Pennsylvania* (Philadelphia: Merrihew & Thompson, 1845), 48-49.

<sup>97</sup> William Lloyd Garrison, "Remarks on Penitentiary Discipline," in *The Liberator*, vol. 1, no. 1 (1831), 1.

As necessary to this theological change was the adoption of certain Enlightenment philosophies in Connecticut and New England. Most significant were the ideas proposed by Cesare Beccaria, who advocated for a scientific approach to criminology. Like many theologians, Beccaria believed that environmental conditions caused criminality and that excessive punishments were an inappropriate response for both preventing crime and reforming criminals. Beccaria wrote, "In order that punishment should not be an act of violence perpetrated by one or many upon a private citizen, it is essential that it should be public, speedy, necessary, the minimum possible in the given circumstances, proportionate to the crime, and determined by the law."<sup>98</sup> In other words, punishment needs a purpose. Acts of violence and incarceration to Beccaria had no gain other than suffering. Citizens of Connecticut knew Beccaria; the *New Haven Register* newspaper published a translation of his *On Crimes and Punishment* throughout 1786.<sup>99</sup> Bushnell took Beccaria's ideas further, suggesting that corporal punishment had no effect on reform but was counter to it.<sup>100</sup>

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<sup>98</sup> Cesare marchese di Beccaria, *An Essay on Crimes and Punishments* (Philip H. Nicklin, 1819), 198.

<sup>99</sup> Cesare Beccaria, "An Essay on Crimes and Punishment," *New Haven Register* (New Haven, 1787- 1786).

<sup>100</sup> Horace Bushnell, *Christian Nurture* (New York: Charles Scribner, 1847).

Religious theology promoting self-salvation and scientific philosophy advocating for a rational approach to crime collided in New England in the early to mid-nineteenth century. A new breed of prison reformers emerged who believed criminality resulted from external environmental pressures and internal moral weakness. If people could change, and the environment created crime, then it stood to reason that a controlled environment could reverse criminality.<sup>101</sup> William Tallack, the English social reformer, wrote of environmentalism, "From the first moment of existence, the condition of each individual is formed and determined, mainly by the character of the environment by which he is surrounded."<sup>102</sup>

### ***America's Forgotten Reformer, Louis Dwight***

Whether swayed by passionate pastors or persuasive philosophers, Americans of the early nineteenth century were experiencing a sea change in how they viewed the causality of crime. For the first time, people heard from the pulpit and read in the newspaper that criminality was not an inherited condition but an ailment that could be reversed through scientific understanding, the grace of God, or some combination thereof. Louis Dwight (1793-1854) was the

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<sup>101</sup> David J Rothman, *The Discovery of the Asylum; Social Order and Disorder in the New Republic* (Boston: Little, Brown, 1971).; The concept of developing prisons as an environment antithetical to that of the chaotic urban world as a means of reforming prisoners is borrowed from David J. Rothman.

<sup>102</sup> Robert John Wilmot Horton, "Letter from Willam Tallack," in *An Inquiry into the Causes and Remedies of Pauperism.*, 1830.

reformer who fused these ideas. Dwight was born in Southbridge, Massachusetts, as the middle child in an "old Puritan Stock" family. In 1806, at 13, Dwight's father passed, and his mother sent the young boy to live with the Rev. Dr. Nathaniel Backus of Bethlehem, Connecticut, to begin training for a life in the pastorate.<sup>103</sup> At 18, Dwight enrolled at Yale Divinity School to become a Congregational minister, but a botched chemistry experiment curtailed that dream, leaving him with scorched lungs that impaired his ability to project his voice.<sup>104</sup>

Nevertheless, he would dedicate the rest of his life to advocating for those who could not speak for themselves. Dwight's first experience with prisoners occurred while attending Yale. His memoir recounts frequent visits to the nearby New Haven Workhouse, then called the Whalley Avenue Jail. He shuddered at the sight of prisoners so emaciated that their bones protruded from their bodies and winced at the frequent cane lashes inflicted on the thin, pale skin of the unfortunate tenants of the small jail.<sup>105</sup> Compelled to alleviate their suffering, Dwight brought them food and read them passages from his bible. After his tenure at Yale, Dwight would not forget his experiences on

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<sup>103</sup> William Jenks, *A Memoir of the Rev. Louis Dwight: Late Secretary of the Boston Prison Discipline Society* (Boston: Press of T.R. Marvin, 1856).

<sup>104</sup> Ibid.; "The Late Rev. Louis Dwight.," *The New York Times*, July 27, 1854; "The Late Rev. Louis Dwight," *Boston Courier*, July 7, 1854.

<sup>105</sup> While the historic building is gone, Whalley Avenue correction still exists on the site.

Whalley Avenue, and indeed, this would mark the first step in a lifelong pursuit of prison reform.

Upon graduating from Yale, Dwight returned to Massachusetts, where he continued his studies at the Andover Seminary. There, he became a believer in labor's physical and spiritual benefits, a lesson he would apply to his reform goals later in life. Born to privilege, Dwight had little experience in the way of manual work before his time at Andover. However, the headmaster insisted that all students tend to a large acreage vineyard from which he made sacramental and undoubtedly recreational wine. Work was good for the body and the soul; he needed a willing labor force to tend his vines. Whatever his pitch, Dwight was buying. An older Dwight reflected on his time in those fields fondly. The fresh air reinvigorated his damaged lungs; his new farming skills made him feel like a "... good, self-sufficient republican..." and the "...feeling of work upon his muscles..." made him feel closer to God. The experience at Andover taught him that labor was healthy, sustainable, and righteous.<sup>106</sup>

While studying at Andover, Dwight met a visiting John Adams, educator, and headmaster of the neighboring Phillips Academy. Adams offered Dwight a post at the academy teaching theology, which the young man accepted. His time at Phillips Academy was vital because he met one of the school's benefactors,

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<sup>106</sup> Jenks, *A Memoir of the Rev. Louis Dwight*.

the newspaperman Nathaniel Willis. Dwight's friendship with Willis gave him the tools any good evangelist needed: an outlet and connections. As far as an outlet, Willis owned, among other publications, the long-running New England Newspaper, *The Independent Chronicle*, and his son, Nathaniel Willis, who operated *The Boston Reader*, which was one of the largest religious newspapers in New England, if not the nation. His friends, and soon after Dwight married Louisa Willis in 1824, in-laws used their positions of authority to launch Dwight's career, first as an agent of the American Education Society, at which the elder Willis was a trustee, and then chief Editor at *The Boston Recorder*.<sup>107</sup> While a fantastic opportunity, Dwight's health hindered his ability as an editor, and he looked for less stressful employment. As a result, Dwight became an agent of the American Bible Society and the American Tract Society, both of which aimed to distribute ephemeral religious material and Bibles to customers nationwide.

In his 30s, Dwight's health began to fail. His mother wrote to Lewis' brother about the matter, saying that "...his frequent bouts of coughing left blood..." and that Louis' family doctor believed he would soon cough his way to an early grave.<sup>108</sup> Dwight was, if nothing else, a persistent man, and looking back at his time at seminary, he must have remembered how the fresh air of the

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<sup>107</sup> Ibid

<sup>108</sup> William Jenks, "Mother's Account of Louis Dwight," in *A Memoir of the Rev. Louis Dwight: Late Secretary of the Boston Prison Discipline Society* (Boston: Press of T.R. Marvin, 1856).

vineyard invigorated his body and soul. He told his wife that he would travel by horseback where he could rest his lungs. Lewis likely had little intention of seeing the streets of Boston again or the white belfry of the Congregational Church where he attended mass. Dwight first stopped at his old stomping grounds, the Whalley Avenue Jail in New Haven, where he visited and prayed with a woman slated for execution.<sup>109</sup> Faced with his mortality, this experience may have shaped Dwight more than any other. More astoundingly, he did return to Boston. Not only did he return, but he was nearly cured by what he surely thought was divine intervention. Not only was he cured, but he came home with a new purpose: to aid the prisoners of America.

On November 4, 1824, Dwight traveled to New York to attend a meeting of the American Bible Society (ABS), where Louis' elder brother Theodore was a manager. Theodore and the other managers heard a proposal from Dwight. He requested that ABS donate bibles for Dwight to distribute to prisoners along the East Coast. Moreover, Dwight proposed spending the following months traveling by horseback and distributing Bibles to the prisoners of America. After several men gave speeches in favor of the proposal, Theodore Dwight said to his colleagues, "...it will soon be put to us, the managers of this society, by the savior

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<sup>109</sup> William Jenks, "Dwight's Account of a Condemned Woman," in *A Memoir of the Rev. Louis Dwight: Late Secretary of the Boston Prison Discipline Society* (Boston: Press of T.R. Marvin, 1856).

of the world, whether in sick or in prison, ye visited me." Dwight's proposal passed unanimously.<sup>110</sup> Shortly after, he wrote to a friend, "In this employment, it is my conviction that it is the work which my lord would have me perform."<sup>111</sup>

Throughout late 1824 and 1825, Dwight traveled from Connecticut's New-Gate to Philadelphia's Walnut Street Jail, New York's Auburn to the Baltimore Jail, and many other stops. He found that the poor condition he knew at the Whalley Avenue Jail was not exceptional. What Dwight saw horrified him, likening the jails' conditions "evil" and deriding Christian society for allowing the existence of such horrors. From Hartford, he wrote, "After nearly spending a week in [New-Gate's] filth, investigating subjects more loathsome than its polluted air, I found myself at night totally prostrate, desiring only to be at rest."<sup>112</sup> In New York's Bidwell Prison, Dwight saw the starving, the cold, the sick, and the dying. He stated his goal was to "...alleviate the suffering I witness."<sup>113</sup> Worse than mere neglect, he saw men beaten and tortured with cruel consistency. In Washington, D.C., he described a scene that haunted him. "In one small room, I have seen three women and four children. Two of these [women] were wrapped in blankets apparently with no other clothing...." When Dwight

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<sup>110</sup> American Bible Society, "Annual Report of the American Bible Society, Volume 8" (New York: American Bible Society, 1825).

<sup>111</sup> Jenks, *A Memoir of the Rev. Louis Dwight*.

<sup>112</sup> Jenks, "Letter from Hartford."

<sup>113</sup> Ibid.

looked toward the children, "...they sat upon the floor to hide themselves."<sup>114</sup>

They were children of an enslaved person impregnated by her master. When the master died, the children ended up in this horrid place. "The children have no bed or water, and their clothes never washed." "There are other circumstances..." he continued "...in relation to their misery in this room that I cannot even mention."<sup>115</sup>

Despite what he witnessed; Dwight appears not to have opposed the practice of imprisonment itself. However, he did believe that the punishment he saw was excessive and cruel, and like Bushnell and Beccaria, he felt that the conditions should be more humane and compassionate. Dwight finished his trip and reflected later in life that he left that experience with a new conviction. "[Prisoners] are the most miserable and degraded of the human race." "There is but one sufficient excuse for Christians to allow suffering such evils to exist in prisons in this country, and that is that they are not acquainted with the real state of things." Dwight's mission was to bring to light the conditions of American prisons to the public. He was so sure his cause was just that he wrote, "When I bring before the Church of Christ a statement of what my eyes have seen, there will be a united and powerful effort to alleviate the miseries of

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<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

prisons."<sup>116</sup> However, a dismayed Dwight found little support for prison reform within the Congregationalists of Boston. The church's indifference was not the result of a cruel contempt for persecuted prisoners but the lack of a central body to implement any reform program.

### ***The Prison Discipline Society and the "Ideal Prison"***

In the early nineteenth century, prisons, even in the same State, primarily operated independently and free from each other's influence. Dwight understood that for national prison reform to be effective, there needed to be a central institution advocating for change. Unable to make headway through the Congregational Churches, Dwight founded the Prison Discipline Society (PDS). Since Dwight was a man of influence and connections, PDS was an immediate power in prison reform. Though born in Boston, PDS was not a local institution. Instead, PDS worked to influence the growth of similar groups nationwide.<sup>117</sup> Between 1827 and 1844, similar groups emerged in New York, Maryland, Ohio, Massachusetts, Indiana, and Connecticut, with prison wardens participating in PDS events and reporting statistics to the organization.<sup>118</sup>

The earlier Pennsylvania Prison Society (PPS), the group responsible for constructing the Eastern State Penitentiary, heavily influenced PDS. Like PPS, PDS

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<sup>116</sup> Ibid.

<sup>117</sup> Louis Dwight, "Prison Discipline Society Constitution," 1827, Simmons College Digital Archives.

<sup>118</sup> Ibid.

advocated for a Christian treatment of prisoners, including more humane and purposeful imprisonment. Like the founders of PPS, Dwight was motivated by his conviction that a combination of penitence and religious instruction could reform convicts. PDS' efforts to promote religious instruction came by advocating for larger prisons to have on-staff chaplains, a practice that would become commonplace by the 1830s. Equally crucial to their effort to promote religious instruction was their promotion of reformatory labor.

The most important commonality between PPS and PDS was their adherence to the potential for human change. Religious reformers believed penitence could restore an individual to God's grace. For PPS, penitence was achievable through solitary confinement and individual reflection, both of which materialized in the claustrophobic and monastic architectural design of the Eastern State Penitentiary. PDS advocated for penitence, too, but through labor. Hard work would guide one back to God's grace. PDS not only advocated for using labor as a mode of reform, but the group conducted the earliest study of existing prison labor in the United States. Primarily concentrated on the Northeast, PDS collected data and anecdotal evidence from Dwight's travels to workhouses, jails, and penitentiaries to find an ideal prison model to recommend to administrators nationwide.

PDS did find a model upon which to build a better system: New York State's Auburn Prison, built in 1818. Auburn was the first purpose-built prison to

suit penal labor in America, and it is widely considered the first industrial prison in the nation. Of his experience at Auburn, Dwight wrote, "...the busy hum of industry, breaking the stillness of the scene, as heard at the prison at Auburn, is a striking contrast to the oaths and imprecations, the obscenity and pollution, the schemes of villainy, and the malignant soliloquy's, which may be heard by the side of the solitary cells and gloomy dungeons of many prisons where labor has not been introduced."<sup>119</sup> While PDS found Auburn's work programs economically practical, PDS managers considered Auburn a depraved institution that lined the pockets of local capitalists but did little in the way of helping prisoners' rehabilitation. PDS's ideal model would follow Auburn's example regarding labor programs and advocate for better treatment of prisoners and religious and educational instruction. PDS advocated that states construct new prison facilities instead of modifying existing structures. The experiences at Connecticut's New-Gate were enough to convince PDS that the latter was not a good idea.<sup>120</sup> Like PPS's Eastern State Penitentiary, new construction would allow PDS's philosophies to be physically embodied and supported through intentional architecture. The various architectural attributes of PDS's recommendations are worth noting because most prisons built in the Northeast after 1827 adhered to

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<sup>119</sup> Prison Discipline Society, "Annual Report of the Board of Managers of the Prison Discipline Society" (Boston: Perkins & Marvin, 1827), 36

<sup>120</sup> Ibid.

the PDS model. While most historians have accredited the explosion of industrial prisons to the success of Auburn, PDS popularized the "Auburn System" through its extensive outreach, booster campaigns, and the distribution of modular architectural plans.<sup>121</sup>

PDS engaged architects to design a new prison plan that embodied their labor, order, religion, and educational instruction goals to disseminate the plans and other recommendations. The developed architectural plans prioritized economic efficiency, modularity, scalability, and security.<sup>122</sup> Unsurprisingly, atop the list of recommendations for the ideal prison were "...high and strong walls..." but not for the reason that may immediately come to mind. Yes, designers intended walls to keep prisoners in, of course, but just as important, walls prevented "persons on the street" from negatively influencing convicts. PDS was concerned that outsiders could hamper prisoners' reform progress, illustrating their firm belief that the environment impacted criminality; therefore, it was vital for administrators to separate prisoners from the public. Likewise, separating prisoners at night, when not supervised in shops, was also vitally important. PDS believed that one prisoner could corrupt others. They were particularly concerned about the formation of counterfeiting rings in prison. As

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<sup>121</sup> Louis Dwight, "Historical Reflections on the Founding of the Boston Prison Discipline Society," Simmons College Digital Archives.

<sup>122</sup>, "Annual Report of the Board of Managers of the Prison Discipline Society" (Boston: Perkins & Marvin, 1827, 1827, 1828, 1829).

such, cells did not allow easy communication between prisoners. However, the experiences at Eastern State illustrated that prisoners would find creative ways of communicating despite the designers' best efforts to prevent it.<sup>123</sup> Therefore, PDS cells were slightly inset, a design that inhibited prisoners' ability to see to the left or right of their cells. Prisoners were constantly unaware of whether guards were observing them, forming a self-policing system.

Further, PDS recommended that each cell block have several solitary confinement cells. John Haviland, the architect of Eastern State Penitentiary (1829), was influential in convincing people of the power of solitary with his plans for Eastern State. Solitary confinement was vitally important for two reasons. First, it was essential to motivate prisoners to work. Under the PDS system, all inmates spent time in solitary confinement upon arrival, a practice discussed in further detail in Chapter 2. Once administrators released prisoners from solitary, they allowed them to work or return to solitary. The choice was an easy one. PDS advocated for making labor the best option for prisoners by keeping the unruly or those unwilling to work in solitary confinement for up to 90 days before putting them to work. The Auburn warden imprisoned Asa Allen for 70 days of uninterrupted solitary upon his arrival. PDS reported that "...when

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<sup>123</sup> Anna Vemer Andrzejewski, *Building Power: Architecture and Surveillance in Victorian America* (Knoxville: University of Tennessee Press, 2008).

released, he came out in good health and performed good labor."<sup>124</sup> Second, solitary confinement was a tool to punish and discourage prisoner collusion. Solitary confinement was necessary to separate that cancerous prisoner from the general population. A PDS report found that "...in order to prevent collusion, [it is necessary] to separate the prisoners from each other, and to subject them to such discipline as will effectually prevent them from holding any communication whatever with their fellow prisoners."<sup>125</sup> An 1844 New York State Prison Association report stated, "The great object of discipline in prison is to separate the convicts, so that they cannot communicate with each other, and to subject them to such regulations as will prevent collusion and secure obedience."<sup>126</sup> Massachusetts prison inspectors expressed similar sentiments to their State Legislature in 1851.<sup>127</sup>

The most crucial consideration for PDS's ideal prison was the ability to be self-supporting. The architectural drawings developed by PDS were simple rectangular plans designed to be modular. Builders could implement the same

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<sup>124</sup> Prison Discipline Society, "Annual Report of the Board of Managers of the Prison Discipline Society" (Boston: Perkins & Marvin, 1827), 34

<sup>125</sup> *Report of the Philadelphia Society for Alleviating the Miseries of Public Prisons* (Philadelphia: Joseph R. A. Skerrett, 1829), 26.

<sup>126</sup> *Proceedings of the New York State Prison Association, at Its First Annual Meeting, Held at Albany, January 15, 1845* (Albany: C. Van Benthuysen, 1845), 16.

<sup>127</sup> *Report of the Inspectors of the Massachusetts State Prison, to the Legislature, January 16, 1851* (Boston: Dutton and Wentworth, State Printers, 1851), 8.

plans to construct multi-level cell blocks or industrial lofts. Once completed, the prison officials could convert buildings to cell blocks or factories anytime. Truss systems that sat on wooden columns and exterior stone or brick pilasters provided large open spaces spanning nearly forty feet, which would have been conducive to early factory work. Without cells, bars, or walls around them, it would be impossible to distinguish one of these PDS prison buildings from a textile factory at Lowell, Willimantic, or Pawtucket from the same era.

PDS's recommendations went beyond physical infrastructure. For PDS, the ideal model for prison work would be steady and financially sustainable for the prison. "It is most desirable that the prisons should be made as far as possible self-sustaining by the productive labor of the convicts as auxiliary to the efforts for their reformation."<sup>128</sup> Most importantly, it must be congruent with prisoners' needs to reform themselves<sup>129</sup>. That meant labor needed to be tough, motivating prisoners to repent their crimes. Dwight believed that crime derived from a chaotic and corrupt urban environment, and prison labor could serve to counteract this by forcing regimentation and responsibility upon prisoners. PPS and John Haviland popularized the idea of counteracting the environment

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<sup>128</sup> Louis Dwight, "The Moral Influence of Prisons," *The North American Review* 89, no. 185 (1859): 36-59.

<sup>129</sup> Louis, Dwight. *The Higher Object of Penitentiary Science: A Discourse Delivered before the Society for the Reformation of Juvenile Delinquents, in the City of New York, Dec. 12, 1828*. New York: Van Norden & Amerman, 1829. (Pages 17-18)

through rational and moral architecture.<sup>130</sup> However, Eastern State was expensive to build, and its isolation program made financially sustainable work programs unobtainable. Dwight's proposed labor programs essentially served the same ideological purpose as Eastern State's architectural design but were seen by many as superior because labor could help support the prison financially and was cheaper to construct at nearly 10% of the cost.<sup>131</sup>

PDS advocated for prison trades that were easy to attract contractors without much investment. Dwight was an aspirational reformer but a realist. He realized early on that highly skilled trades would be challenging to administer. He knew states were more likely to adopt a labor system to earn money; this inclination was already evident from the success and popularity of the Auburn Industrial Prison.<sup>132</sup> The PDS reported on the earnings of prison systems that implemented the types of labor they recommended. PDS was particular about what kinds of labor were best suited for convicts. Metalwork, including casting, dye-making, and locksmithing, was not advised since these skills only increased the temptation for a life of crime. These trades are "...all admirably adapted to

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<sup>130</sup> Rothman, *The Discovery of the Asylum; Social Order and Disorder in the New Republic*; Andrzejewski, *Building Power*; Arthur Allen, *Architecture and Confinement: On the Architecture of Asylums and Prisons*, 2014.

<sup>131</sup> Prison Discipline Society, "Annual Report of the Board of Managers of the Prison Discipline Society" (Boston: Perkins & Marvin, 1827).

<sup>132</sup> Gershom Powers, *A Brief Account of the Construction, Management, and Discipline of the New York State Prison at Auburn* (Auburn: U.F. Doubleday, 1974).

furnish implements of mischief and skill, in the arts of counterfeiting and picking locks.<sup>133</sup> They essentially trained prisoners for counterfeiting and burglary. Complicated trades also required more significant investment in equipment, tools, and training, of which PDS did not believe there was a significant return on investment. "The simpler arts are more profitable..." "In those penitentiaries where there is a great variety of employment, the expense to the state is much greater than where one simple and useful trade occupies the time of the majority of men." PDS found that quarrying activities were the best because they were both "laborious and healthy," followed by cheap weaving, which was cheap to produce and easily learned. Other trades, including "coopers, weavers, shoemakers, tailors, hatters, and stonecutters, cannot so easily pervert the design of their employment."<sup>134</sup> They pointed out that New Hampshire and Massachusetts, which had adopted PDS labor practices in 1825, saw a huge increase in earnings. Net prison labor proceeds in New Hampshire were only \$192.50 in 1822 but rose to \$5,340.57 in 1826 after establishing a prison weaving industry. Massachusetts earned only \$312 in 1824, but that rose to \$8,819 in 1826 after establishing a stone-cutting operation that used simple tools "...not easily converted into implements of mischief." "These trades,

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<sup>133</sup> Prison Discipline Society, "Annual Report of the Board of Managers of the Prison Discipline Society" (Boston: Perkins & Marvin, 1826), 15.

<sup>134</sup> Ibid; Prison Discipline Society, "Annual Report of the Board of Managers of the Prison Discipline Society" (Boston: Perkins & Marvin, 1827).

therefore, are much more safe in a Penitentiary than the curious arts of whitesmiths, lock makers, and copper plate prisoners."<sup>135</sup> For PDS, the act of work, not the type of work, mattered in prison reform. Their annual report from 1828 wrote that "Unity of employment is of greater importance than variety."<sup>136</sup>

For PDS, labor was vital for creating financially self-supporting institutions and giving prisoners the tools to repent their crimes, but labor was a means of combating recidivism (the rate by which convicts return to jail). Writing of Sing Sing in 1828, Dwight stated, "It is through labor alone that they can be so trained and habituated to industrious habits, as to be fitted for usefulness when discharged from confinement."<sup>137</sup>

Perhaps the recidivism rate in the early nineteenth century was the most robust evidence that older systems were not reformatory. While few reliable statistics exist, it is likely that nearly 50% of released inmates returned. In 1847, prison inspector Elam Lynds wrote that "a large majority" of prisoners return to a

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<sup>135</sup> Prison Discipline Society, "Annual Report of the Board of Managers of the Prison Discipline Society" (Boston: Perkins & Marvin, 1828).

<sup>136</sup> Prison Discipline Society, "Annual Report of the Board of Managers of the Prison Discipline Society" (Boston: Perkins & Marvin, 1829).

<sup>137</sup> Prison Discipline Society, "Annual Report of the Board of Managers of the Prison Discipline Society" (Boston: Perkins & Marvin, 1828).

life of crime.<sup>138</sup> Likewise, Henry Flagg, prison inspector in Connecticut, stated that "the instances of relapse into crime...are numerous."<sup>139</sup>

We can make this assumption since PDS argued that a 30% recidivism rate in working prisons was favorable. PDS argued that having a job led prisoners to be self-supportive when they left prison, and this is where PDS was progressive because they looked beyond imprisonment. For their argument, they cited Auburn. Only 30% of released prisoners returned to jail, while the others have "returned to their families, and are industrious and responsible citizens."<sup>140</sup>

PDS asserted that labor also benefited prisoners' mental and physical health. Health became an essential focus in PDS' reform-oriented programs because keeping prisoners free from illness was humane, but most importantly, it kept them alive. Prisoners who did not survive imprisonment stood no chance of becoming a changed person on the other side. Regarding spiritual health, PDS argued that hard labor was consonant with republican principles, promoting self-reliance and respectability, essential to reforming and combatting recidivism. Labor was not just good for the spirit; labor helped keep prisoners alive. PDS

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<sup>138</sup> Elam Lynds, "Report of the Inspector of State Prisons, Made to the Legislature of the State of New York, on the 27th of January, 1847," in *Documents of the Assembly of the State of New York*, vol. 2 (Albany: C. Van Benthuysen, 1847, 417).

<sup>139</sup> Ibid.

<sup>140</sup> Prison Discipline Society, "Annual Report of the Board of Managers of the Prison Discipline Society" (Boston: Perkins & Marvin, 1827), 83.

asserted that giving prisoners something to do was essential to maintain physical health. Thomas Eddy wrote, " The beneficial effects of labor in preserving the health of the prisoners are so great, that the inspector of the prison remarks, that since the introduction of labor, he does not recollect a single instance of a severe illness, which has been occasioned by the confinement, or by the mode of discipline."<sup>141</sup>

We know from modern psychology that they were on to something. Mental health and, shortly thereafter, the immune system decline when humans are without something to occupy the mind. PDS's supposition was based on medical data from the London Medical Repository (LMR). The LMR reported that in the Prison of Metz in France, the fatality was reduced by 50% upon the introduction of labor in 1819. PDS concluded from these LMR reports claimed that "...the saving of life is attributed chiefly to introducing labor."<sup>142</sup> In New York's Auburn, PDS reported that mortality rates were about 1 in 50 prisoners.<sup>143</sup>

While labor was an essential tool of health and reform, not all convicts would benefit equally under the PDS plan. Northeastern prisons had a

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<sup>141</sup> Thomas Eddy, "Report of the Visiting Committee of the Society for the Prevention of Pauperism, on the System of Prison Discipline," in *The New York Society for the Prevention of Pauperism, Fourth Annual Report* (New York: T.W. Mercein, 1824), 79–80.

<sup>142</sup> Prison Discipline Society (Boston Mass.) and Prison Discipline Society (Boston Managers Mass ) Board of, "London Medical Repository, Prison of Metz, France," in *Annual Report of the Board of Managers of the Prison Discipline Society, 1828.*

<sup>143</sup> Ibid.

disproportionately larger black population than the general U.S. prison population. In 1828, Connecticut saw free blacks incarcerated at a rate of one per every 205 individuals, while the rate of whites incarcerated was more like one in 2,000. Similar numbers existed in Massachusetts, where whites were incarcerated at a rate of 1 to 1,665, while blacks were jailed at 1 to 140. New York saw whites jailed at 1 for every 2,153 and blacks at 1 in 350. In New Jersey, whites were jailed at 1 in every 3,742 and blacks at 1 in 833.<sup>144</sup> While PDS was aware of this disparity, they did not propose any solution. Indeed, if Dwight believed that his recommended labor programs would reform prisoners, then it stands to reason that he believed that some prisoners could or should not be reformed. Instead, PDS recommended that black prisoners have minimal interaction with white inmates so they could not corrupt the latter. This recommendation would leave blacks relegated to their section of the cell blocks, but most importantly, it relegated them to work that was not considered reformatory.

For PDS, for work to be reformatory, it needed to be masculine.

Masculine work included hard labor. However, since blacks and whites could not work together, blacks were assigned more feminine and menial tasks. These included cleaning the cell blocks, cooking in the isolated kitchen, and other tasks.

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<sup>144</sup> Prison Discipline Society, "Annual Report of the Board of Managers of the Prison Discipline Society" (Boston: Perkins & Marvin, 1828).

While these were merely the recommendations of PDS, we know that this scenario would indeed play out in American prisons into the twentieth century. There was also a gender divide. While PDS focused primarily on male inmates, they also commented on women prisoners. Female convicts worked, but like with black prisoners, the work was designed to keep them occupied but had no bearing on reform goals or even finding a job once released. Female inmates were to be assigned handicraft work like stitching and mending garments.<sup>145</sup>

There were benefits of labor that had nothing to do with reform or recidivism. Hard labor in a manufactory setting allowed prison administrators to control and track large numbers of prisoners at any given time. "Every man has his place, and every place has its man," the PDS annual report stated in 1830.<sup>146</sup> The regimentation of labor allowed prison officials to account for and control the movement of prisoners. Eastern State accomplished control by keeping all convicts in solitary confinement, but as previously stated, building a facility of that nature was expensive. So, labor filled the control role in the PDS plan. PDS explicitly recommended hard labor as a cheaper alternative than solitary confinement for prisoner control, specifically curbing the propensity for multiple prisoners to communicate and revolt. "It is much more difficult to prevent

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<sup>145</sup> Ibid.

<sup>146</sup> Prison Discipline Society, "Annual Report of the Board of Managers of the Prison Discipline Society" (Boston: Perkins & Marvin, 1830).

human beings from doing mischief when they have nothing else to do than when they are usefully employed," wrote Dwight in 1830.

### ***PDS and the Closing of Old New-Gate***

Despite being based in Boston, PDS significantly influenced prison administrators across the Northeast. The majority of PDS's operating budget in the 1830s was derived from the publication and sale of their "Guide to Prison Management," which compiled the statistics and recommendations from the PDS annual reports.<sup>147</sup> PDS's most notable impact was perhaps in Connecticut, where it spearheaded the opposition against the closure of Old New-Gate and the inauguration of its successor, the Wethersfield State Prison. Dwight quickly found Nutmegger allies in the crusade to close New-Gate. Among the most critical connections Dwight made was with John Ross, an attorney, former mayor of Hartford, and one of Connecticut's most staunch opponents of the existing criminal justice system. Ross was a founding member of PDS as well.

In 1825, Dwight, Ross, and PDS pressured the Connecticut State Legislature to close the barbaric New-Gate permanently. We know that PDS directly impacted this decision because an 1826 report from the Connecticut Legislature reported that they were adopting the PDS model.<sup>148</sup> Not only was the

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<sup>147</sup> "Report of the General Assembly, 1826," 1826, The Public Records of the State of Connecticut, Connecticut State Archives.

<sup>148</sup> Ibid.

PDS model more humane than New-Gate, but there was also an essential financial element to that decision. PDS laid out the roadmap for a financially self-sustaining prison, and the experience with New-Gate's financial failures made this extremely attractive. New-Gate was supposed to be a financially self-supporting institution. The earnings from prisoners' labor were supposed to pay for all the institution's expenses and, ideally, turn a profit for the State.

Nevertheless, in the first two decades of the nineteenth century, Newgate failed to make a profit, and the master of the House of Correction requested an additional \$7,000 annually to support the prison.<sup>149</sup> The establishment at New-Gate has always been considered an expense to the State and cannot be made productive without a tremendous additional expense; yet, under the present arrangement, it is believed the State will realize from its labor a sum sufficient to pay the expenses of that establishment."<sup>150</sup> Prisoners were a burden on society for their crimes; being a financial burden was a serious problem for law-abiding citizens. Of course, New Gate had the distinct production disadvantage of not being built as an industrial prison.

### ***The PDS Model at Wethersfield State Prison***

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<sup>149</sup> "Report of the General Assembly, 1825," 1825, The Public Records of the State of Connecticut, Connecticut State Archives.

<sup>150</sup> "Report of the Directors of the State Prison," in *Public Documents of the State of Connecticut*, vol. 2 (Hartford: Hudson and Goodwin, 1815), 81–82.

Because of PDS' focus on labor as a potential tool of reform, its recommendations are closely aligned with the model of Auburn Prison or the "Auburn System." However, PDS's modification and popularization of the Auburn System spread across the nation throughout the nineteenth century. If any prison stood for the PDS ideal version of the "Auburn System," it wasn't Auburn, but Connecticut's Wethersfield State Prison. More than any other, Wethersfield State Prison was the embodiment of PDS ideals, and it served as the principal PDS model until the PDS ceased operation in the 1850s. Wethersfield followed PDS's architectural specifications, work program recommendations, focus on religious instruction, and penchant for military-like regimentation and use of hard labor. Wethersfield Prison was praised for its "order, regularity, and discipline," and it was noted that "the example of this prison has been extensively copied, and is now held up as a model of excellence in prison discipline."<sup>151</sup>

At the same time, Auburn, upon which PDS cited most of its financial data, was not only self-supporting but was reportedly very profitable for the State of New York. New-Gate's replacement, the Wethersfield Prison, would be different in almost every perceptible metric from its forerunner except that labor

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<sup>151</sup> "Report of the Committee on the State Prison," in *Reports of the Committees of the House of Representatives of the State of Connecticut* (Hartford: Hudson and Goodwin, 1827), 18.

would remain a central component of its operation. A further Amendment to "An Act for the or the Establishment of a State Prison" continued to support the idea that prison labor should go to support the prison. The act states that "the profits arising from the labor and industry of the convicts shall be applied to the support of the prisoners and the expenses of the prison establishment."<sup>152</sup>

In 1827, two years after the Connecticut Legislature voted to close New-Gate, they elected to proceed with the construction of a new prison by acquiring property along the banks of the Connecticut River in Wethersfield, just a few miles outside of Hartford. Before Wethersfield was even open, it was clear that labor would be central to its administration. Like Auburn Prison constructed a few years earlier, Connecticut convicts hewn the stones and beams to build the Wethersfield Prison. Even the Legislature's choice of the location indicated their foresight into the labor potential for their institution. Its location along the banks of the Connecticut River, just south of the commercial city of Hartford, made it an ideal spot to facilitate the transportation of raw materials and finished prison-made goods. This was a trend common in industrial prisons of the era, with Sing Sing's location on the banks of the Hudson, Auburn's placement immediately

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<sup>152</sup> "An Act for the Establishment of a State Prison," in *Acts and Laws of the State of Connecticut, in America* (Hartford, Conn., United States: Elisha Babcock, 1821), 69.

adjacent to the Owasso River, and Charlestown Prison's position on the Charles River near Boston Harbor.

When Wethersfield State Prison officially opened (and closed) its doors in October of 1829, it was designed to be more than just a place for incarceration. It was structured as an institution that combined hard labor with religious instruction, embodying the vision of Louis Dwight. In addition to its modern cell blocks, the prison was equipped with a dedicated chapel and a resident chaplain, fulfilling Dwight's aspiration for a spiritual element in the correctional facility. The prison also featured a variety of adaptable workshop spaces designed to facilitate an array of prisoner labor activities. The prison administration took a strategic approach to labor, forming partnerships with shoe manufacturers. This move proved to be a financial success, contributing significantly to the prison's revenue even into the twentieth century.

In the early nineteenth century, America, particularly New England, was grappling with a labor shortage in its budding industries. The prison system played a pivotal role in addressing this issue, with prisoners stepping in to fill the labor gap and contribute to the production of much-needed goods. Wethersfield State Prison was regarded by many as an exemplary institution for penal reform. However, what made the prison administration proudest was not just the reformative aspect but their financial acumen. The prison's success in turning

labor into a profitable venture earned them widespread admiration across the nation.

After 1829, labor superseded corporal punishment as Wethersfield's dominant mode of discipline. The Connecticut Legislature officially adopted a policy to limit corporal punishment at that time. This made hard labor as a form of punishment all the more critical.<sup>153</sup> With the official rejection of corporal punishment as the dominant means of control, Wethersfield's administrators looked at Connecticut's most sacred penal tradition: labor. The new piece of legislation officially heralded labor as the dominant means of power. It gave the warden the unilateral power "to keep prisoners at hard labor" and to punish them by "moderate whipping," which they did not consider corporal punishment or solitary confinement. As such, labor was the most desirable form of punishment at Wethersfield, encouraging prisoners to be "...faithful to their tasks or else...suffer the loneliness of confinement or the pain of whipping." Perhaps Wethersfield's focus on labor as prisoners' best option led to the prisons' great financial success. Wethersfield operated in the black every year for the first four decades without requesting funds from the Connecticut

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<sup>153</sup> William Crawford, *Report of William Crawford, Esq., on the Penitentiaries of the United States, Addressed to His Majesty's Principal Secretary of State for the Home Department, 1834*; Scotland, *Address by the Committee of Directors of the Society for the Improvement of Prison Discipline in Scotland, to Their Subscribers, and to the Public of Scotland Generally.*

Legislature.<sup>154</sup> Under a self-supporting system, there were few public or political pressures to change.

Prison life at Wethersfield centered around a highly regimented work experience steeped in theology. Prison administrators justified regimented labor as their principal tool for prisoner reformation. Since the dominant criminological theories of the day postulated that criminals learned their behavior in chaotic and undisciplined environments, strict regimentation was seen as a tool to combat those forces and, in essence, undo criminality.<sup>155</sup>

Regimented labor also served administrators who used it as an essential control tool. Through a strict regimen of time and movement, prison administrators attempted to control the bodies and minds of their prisoners. The criminologist Charles Dudley Warner wrote, "...in Wethersfield prison discipline is carried to a perfection... the prisoners move like a machine, they never speak, they never look up...."<sup>156</sup>

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<sup>154</sup> "Report of the Committee on the State Prison," in *Reports of the Committees of the House of Representatives of the State of Connecticut* (Hartford: Hudson and Goodwin, 1830).

<sup>155</sup> Alexander W. Pisciotta, *Benevolent Repression: Social Control and the American Reformatory-Prison Movement* (New York: NYU Press, 1996); Snell Putney and Gladys J. Putney, "Origins of the Reformatory," *The Journal of Criminal Law, Criminology, and Police Science* 53, no. 4 (December 1962): 437; Mark Colvin, *Penitentiaries, Reformatories, and Chain Gangs: Social Theory and the History of Punishment in Nineteenth-Century America* (New York: St. Martin's Press, 1997).

<sup>156</sup> Charles Dudley Warner, "A Study of Prison Management," *The North American Review* 140, no. 341 (1885): 291–308.

Warner remarked that authorities at the Wethersfield Prison carried out this regimentation with near unparalleled militaristic precision. A typical workday was about twelve hours, the only changing variable being the seasonal light. Gas and oil lighting, familiar sights in late-nineteenth-century industrial sites, were not considered for prison workshops. The risk of prisoner sabotage by fire was too significant to outweigh any productive benefits. By 1897, the seasonal variable was overcome when the Wethersfield Prison became one of the earliest buildings in Hartford County to be electrified. As a result, the length of work shifts became constant throughout the year. Before electrification, the prison gatekeeper's bell rang out just before sunrise, and guards systematically unlocked and inspected each cell. Prisoners stood in front of their narrow cells and, upon a signal, turned to their right and placed a hand on the shoulder of the front man. In synchronized silence, they marched in this formation known as lockstep to the prison shops, where convicts immediately began working with diligence and in silence.<sup>157</sup>

Convicts worked from sunrise to 7:00 a.m. when they were called to stop work and form their lockstep to prepare for breakfast. Once in line, the guards signaled the men to march to the prison yard, where they stopped at evenly spaced lunch buckets. On the watchmen's command, "right," each prisoner

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<sup>157</sup> Phelps, *Newgate of Connecticut*.

turned to their right, and on the command, "up," each man picked up the bucket with their left arm. On the watchmen's command, "forward," they marched into the mess hall, where they sat, ate, and heard Bible readings. Meal breaks were the only time prisoners were allowed to sit, and the morning bible readings were their only entertainment. Thirty minutes later, they marched back to their workshops, where they remained until noon. At lunchtime, the signal was again given, and they marched in the same manner as breakfast. After thirty minutes of eating in silence—without bible readings—lunch was over, and prisoners were marched back to their workshops, where they stayed until 6:00 p.m. At the end of the day, forty-five minutes were allotted for dinner. When dinner was made, guards marched convicts to the main hall, where they attended prayers led by the prison chaplain. After prayers, the guards marched prisoners to their cellblocks and locked them in for the night. Wethersfield's daily schedule followed a similar pattern to other industrial prisons, albeit with slight differences. What is evident from this schedule was that labor was at the center of prison life—the time spent laboring superseded all other activities. The routines of controlled movement, eating, and even **prayer** were centered on work.

### ***Conclusion***

The emergence of incarceration as a method of punishment and labor as a means of reform is intrinsically tied to the expansion of the American

mercantile economy and the early stages of industrialization. Louis Dwight, along with his Prison Discipline Society (PDS), were the pioneering forces behind this development, serving as the most impactful advocates of the industrial prison during the nineteenth century. Despite the significant role played by the PDS, its influence has been largely overlooked, possibly due to the organization's relatively short lifespan. However, the impact of the PDS's Industrial Prison Model cannot be underestimated. This model, embodied in the Wethersfield State Prison, was centered on labor-oriented prisons, justified through the lens of religion and reform, and set the benchmark for cutting-edge prisons until the late nineteenth century. Moreover, the legacy of the PDS continues to permeate our modern prisons, demonstrating the enduring influence of their work.

This is not to say the remainder of the nineteenth century was without significant career change. On the contrary, by the mid-nineteenth century, as America's industrialization progressed rapidly, prison reformers began to reevaluate the role of work as a tool of penal reform. The relationship between labor and reform goals evolved, becoming more intricate. Labor was no longer seen as merely a means to instill a strong work ethic and foster a closer connection with God; it was viewed as a tool to reorient those who had failed to conform to the rules of an industrial society - namely, criminals.

A new wave of prison reformers, known as the Reformists, emerged during this period. They viewed labor not just as a tool for prisoners to engage in

productive activities but also as a means to rehabilitate them. The Reformists believed that through labor, prisoners could be reformed and reintegrated into society, thereby reducing recidivism rates and contributing positively to the community. This marked a significant shift in the perception of labor within the prison system, reflecting the changing societal attitudes of the time.

## Chapter 2

### REFORMISTS, REFORMATORIES, AND THE REFORMATORY MOVEMENT, 1860-1890

"When a man keeps the key of his own prison, he is soon persuaded to fit it to the lock."

-*Alexander Maconochie*<sup>158</sup>

By the mid-nineteenth century, Louis Dwight and his Prison Discipline Society had made significant strides in their campaign to promote labor-oriented prisons across America. These efforts successfully led to the establishment of dozens of such institutions modeled on New York's Auburn Prison and Connecticut's Wethersfield Prison. This model was a groundbreaking development in prison reform, with labor being a central component of the prisoners' daily routines. The idea behind this model was that labor could act as a catalyst for prisoner penance and social reform.

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<sup>158</sup> Alexander Maconochie, *Secondary Punishment: The Mark System* (London: J. Ollivier, 1848), 209.

Intention and execution were not the same. Instead of being used as an instrument for reform, prison administrators exploited labor as a rigid tool of control and punishment. Prisoners were subjected to grueling work hours, often under harsh conditions, with little to no regard for their well-being. Furthermore, many private contractors began to take advantage of this system for their financial gain, effectively turning the prisons into a source of cheap labor. This practice exploited the prisoners and undermined the supposed goal of prisoner reform as the focus shifted from rehabilitation to profit.

By the mid-nineteenth century, a new wave of prison reformers, "Reformists," was deeply critical of this shift. More and more professional prison administrators, lawmakers, and well-informed criminologists were acknowledging the unjust suffering of American prisoners, attributing it to the greed of capitalism and society's demand for physical, mental, and spiritual punishment. This viewpoint was clearly expressed by then Governor Rutherford B. Hayes, who stated that imprisonment "should not be to inflict vengeful suffering, but to regenerate the convicts morally."<sup>159</sup>

Reformists, including Hayes, were part of a burgeoning Reformatory Movement. Their goal was to challenge and transform the existing penal

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<sup>159</sup> E.C. Wines, *Transactions of the National Congress on Penitentiary and Reformatory Discipline, Held at Cincinnati, Ohio, October 12-18, 1870*. (Albany: Argus Co., 1871), 61–63.

practices by advocating for a novel system of criminal treatment that emphasized their new reformatory goals.<sup>160</sup> The reformists aimed to supplant punitive and dogmatic methods with flexible rehabilitation programs designed to reintegrate prisoners into society as productive citizens. As religious doctrines, which perceived crime as an inherited and incurable trait, gave way to theories of environmentalism and Social Darwinism, reformists began to adopt penal programs that aimed to comprehend and remedy criminal behavior through an individualized approach: programs that sought to study and deal with crime through a case-by-case approach.<sup>161</sup> The reformists' emphasis on personal treatment, environmental influences, and post-conviction was at odds with the prevailing prison labor system, which exploited prisoners indiscriminately for the benefit of others.<sup>162</sup>

Though the Reformist reform program differed from the succeeding generation, labor remained the central component of the Reformatory Movement. This chapter posits that the Reformists accepted labor as a crucial part of their prison reform model and attributed a more significant role as the initiator of reform, the benchmark for rehabilitation, and the preventive against re-offending. The Reformatory Movement championed a labor reform program

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<sup>160</sup> Ibid.

<sup>161</sup> Rothman, *Conscience and Convenience*.

<sup>162</sup> Todd R. Clear and George F. Cole, *American Corrections* (Brooks/Cole Publishing Company, 1990).

emphasizing "vocational instruction and constructive labor" to equip inmates with the necessary skills and mindset to thrive in an industrial work environment post-incarceration.<sup>163</sup>

This chapter explores this second generation of penal labor programs. It begins with a brief analysis of the pioneering efforts of Alexander Maconochie at the British penal colony at Norfolk Island and Sir Walter Crofton in the Irish Prison system. This chapter argues that these programs, which focused on labor as a reformatory rather than a punitive measure, resulted from paternalistic intent to mold inmates and a pragmatic need to alleviate overcrowded prisons.

In the United States, alarmingly high recidivism rates, indicating the frequency of re-offending convicts, propelled the Reformists to seek more effective incarceration methods. Americans found inspiration in Maconochie and Crofton's work, and various initiatives followed these models. the 1840s and the 1860s. Although these = programs encompassed various facets of prisoners' lives, such as education, health, mental well-being, and humane treatment, this chapter underscores the pivotal role of labor as the chosen instrument to facilitate prisoners' reintegration into society as productive citizens.

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<sup>163</sup> American Prison Association, "Declaration of Principles," in *Proceedings of the Annual Congress of the American Prison Association* (New York: New York Prison Association, 1870).

The chapter then traces the materialization of the Reformists' ideals into the novel American Reformatory: an institution designed around the concept of work reform for industrial society reintegration. Despite achieving some measure of success, these institutions faced limitations. The allure of revenue from prison labor and the exorbitant costs of constructing new facilities led most states to adopt the Reformists' recommendations as supplementary measures to their existing systems rather than comprehensive replacements.

The chapter concludes by examining the Connecticut Prison Association (CPA), a representative example of the many Reformist groups that sprang up in the wake of America's first reformatories. Despite their good intentions, these groups often promote ancillary labor programs rather than challenge the existing prison labor contract system. The outcome was a system that combined the brutality of exploitative labor with paternalistic influence, extending the criminal justice system's reach beyond the confines of courts and prisons into the communities where freed prisoners resided and worked.

### ***Labor Reform***

A key initiative of the American Reformatory Movement was labor reform, which promoted the idea that hands-on work experience and the application of work ethic could alter the behavior of convicts, equipping them for

a life of productivity and responsibility.<sup>164</sup> this concept of labor reform is distinct from penal labor, which realizes labor as a means of punishment, penance, and recompense. (Chapter 1). Labor reform also had religious implications, but its main emphasis was on the practical necessity for prisoners to acquire discipline and skills through prison work, enabling them to become contributing members of industrial society.

The shift in focus from penal reform to labor reform during the mid-nineteenth century was a response to the perceived inadequacies of the prison labor system at the time, led by the rise of professional criminology. The prison labor system, designed to extract labor from prisoners while also serving as a deterrent to potential criminals, was increasingly ineffective, economically burdensome for the state, and socially stigmatized. The prison labor system was not humane; it was deliberately harsh to extract as much labor as possible from prisoners and serve as a warning to others.<sup>165</sup> Contrary to the common misconception, prison wardens did not hide the harsh realities of this. They were often the focus of public interest, attracting tourists and eventually unwanted attention from social reformers and the press.

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<sup>164</sup> The term “Labor Reform” is that of the author’s. Contemporaries did not use the term.

<sup>165</sup> William Chase, “Penitentiary Labor,” in *The Prisoners’ Hidden Life, or Insane Asylums Unveiled* (New York: Self Published, Chase, 1853), 138–139.

Unfortunately, the harshness of prison life did not deter crime. The rate of crime continued to rise, and even those who had experienced the brutal conditions of prison life firsthand often ended up back in prison. This phenomenon, known as recidivism, was a significant issue in industrializing areas around the globe. Increased immigration, rising conviction rates due to increased crimes punishable by imprisonment, and the expansion of police forces exacerbated the deterioration of prison conditions and pushed their capacities—in terms of both space and resources—far beyond their limits.<sup>166</sup> The high cost of imprisonment and the perception of prisons as a revolving door, or worse, a training ground for criminals, was a hard pill to swallow.<sup>167</sup> For professional criminologists seeking to address the root causes of criminal behavior, the high recidivism rates were not just an indication that the existing system was failing but also a sign that prisons effectively served as breeding grounds for criminal behavior.<sup>168</sup>

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<sup>166</sup> Friedman, *Crime And Punishment In American History*.

<sup>167</sup> In Britain, exacerbating this overcrowding issue was the colonial government of Australia's refusal to accept inmates following the shuttering of several penal colonies in 1850 under the Australian Colonies Government Act; Act for the Better Government of Her Majesty's Australian Colonies, 1850.

<sup>168</sup> Examples of the concern that prisons were training grounds for criminal behavior can be found in Chapter 1.

### ***The Father of Labor Reform, Alexander Maconochie***

Alexander Maconochie (1787 to 1860), warden of the British penal colony at Norfolk Island, Australia, developed and introduced the concept of labor reform between 1840 and 1850 as a targeted strategy to combat the high rates of recidivism. Once his ideas were published, they quickly gained traction and began to influence penal systems across the English-speaking world, and they would have a significant impact on the American Reformatory Movement. Upon his arrival at Norfolk Island, Maconochie was appalled by the conditions he found. The prisoners were plagued by illness and malnutrition, with their physical and mental health deteriorating under the harsh conditions and relentless demands of penal labor. He observed that the few who managed to survive these brutal circumstances returned to society in a worse state than before their incarceration.<sup>169</sup>

Maconochie identified the environment at Norfolk as a significant contributor to criminal behavior. The penal colony normalized violence and hardened its inmates against societal norms and standards. This normalization, coupled with the stigma attached to being a convict, made it almost inevitable that these individuals would revert to a life of crime upon release.<sup>170</sup>

Maconochie's observations led him to conclude that the penal system

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<sup>169</sup> Maconochie, *Secondary Punishment: The Mark System*.

<sup>170</sup> *Ibid.*

desperately needed reform. He turned to the most robust tool in his penal colony: forced labor. However, he believed that he could use labor as a tool for rehabilitation rather than punishment. His ideas marked a significant shift in the approach to penal reform, moving away from punishment and towards rehabilitation and labor reform to reduce recidivism.

Maconochie embarked on a transformative journey to reform Norfolk's penal system, doing away with its long-standing tradition of violence and degradation against prisoners. He took firm measures to ban his subordinates from employing punitive measures such as excessive whipping, solitary confinement, and enforced silence. He even prohibited "degraded" striped clothing, which he believed humiliated prisoners and limited their sense of self-worth.<sup>171</sup>

For Maconochie, imprisonment was not about punishment but rather an opportunity to mold prisoners into productive citizens. He drew inspiration from the Auburn and Wethersfield prison model in the United States, where prisoners were engaged in productive labor. Whether the intention of the models or not, Maconochie believed that these prisoners acquired practical skills and industrious habits.<sup>172</sup> Maconochie introduced a system of productive labor and incentives. His new system marked a paradigm shift in the approach to penal

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<sup>171</sup> Maconochie, *Secondary Punishment: The Mark System*, 194.

<sup>172</sup> *Ibid.*, 190–202.

reform. Labor was not a form of punishment but rather a proving ground for prisoners to demonstrate their readiness to reenter society. Maconochie firmly believed that if a man could work harmoniously alongside fellow inmates and maintain productivity and efficiency under the pressures of incarceration, the prisoner could reenter society without risking reverting to a life of crime.

Perhaps his most important contribution was Maconochie's practical use of self-directed reform. This idea originated in Enlightenment philosophy and the Second Great Awakening (Chapter 1). Maconochie firmly believed that the potential for transformation from a prisoner to a responsible citizen was inherent within the individuals. He believed prisoners could change their lives when he wrote, "When a man keeps the key of his own prison, he is soon persuaded to fit it to the lock." This statement underscores Maconochie's faith in the capacity for self-change; the power to reform lies within oneself.<sup>173</sup>

### ***Sir Walter Crofton and Work as Privilege***

Even though Maconochie's experiment was conducted on a small scale and in a relatively isolated setting, he was inspired to share his experimentation with the world. In 1848, he compiled his experiences and insights into a manuscript titled *Secondary Punishment: The Mark System*. This work detailed his unique approach to prison reform, an incentive-based system. He designed

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<sup>173</sup> Charles Potts, "Crime and the Treatment of the Criminal," *Bulletin of the University of Texas, Humanistic*, 146 (1910), 31.

the system to discourage undesirable behaviors by punishing them while simultaneously encouraging and rewarding desirable behaviors.<sup>174</sup> The Mark System piqued the interest of many, but its most notable follower was the British Naval Officer turned penologist Sir Walter Frederick Crofton (1815-1897). Crofton, who served as the head of the Irish Convicts' Prisons Board during the 1850s and 1860s, was the first known prison administrator to implement Maconochie's "mark" system on a large scale. He applied this system throughout the entirety of Ireland's prison system.

Crofton did not just implement Maconochie's system as it was; he took it a step further by introducing the concept of prisoner "grades." Under Crofton's system, convicts could either progress or regress through grades 1 to 3 based on a system of merits and demerits. Prison officials meticulously tracked this grading system, adding another layer of accountability and incentive for prisoners to improve their behavior. This innovative approach expanded upon Maconochie's original model and further revolutionized how prisoners were managed and rehabilitated. The "Irish System," as it came to be known, was the

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<sup>174</sup> Walter Crofton, *A Few Remarks on "the Convict Question"* (Dublin: Kelly, 1857); Walter Crofton, *A Few Observations on a Pamphlet Recently Published by the Rev. John Burt ... on the Irish Convict System* (London: William Ridgway, 1863); Walter Crofton, *Reformatory Prison Discipline, as Developed by the Rt. Hon. Sir Walter Crofton, in the Irish Convict Prisons*. (London: Longman, Longman, Green, Longman, 1872).

first large-scale implementation of the concept that prisoners' labor could be a catalyst for their betterment.<sup>175</sup>

Under the Irish system, the destiny of prisoners appeared to be within their control. Prisoners could earn merits for good conduct, maintaining cleanliness, and demonstrating workshop productivity. After amassing the necessary merits, prisoners could participate in an innovative system Crofton termed "intermediate punishment," or they could be transferred to the "Irish Intermediate Institutions" by administrators. These lower-security facilities permitted inmates to work beyond the confines of the prison during the day, an idea later referred to as "day parole" (Chapter 5). A prisoner's consistent productivity and good behavior in the Intermediate Institution could result in a reduction or even complete commutation of their sentence. Under this system, Crofton incentivized productive labor, which not only benefited the prison's coffers but the prisoners as well. Crofton incentivized labor productivity in the second stage and made it the most appealing option for prisoners. Upon conviction in Ireland, each prisoner began their sentence in the first stage, which involved prolonged solitary confinement. After enduring isolation for a sufficient

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<sup>175</sup> Crofton, *A Few Remarks on "The Convict Question."*

period and demonstrating compliance, they could work and progress to the second stage.<sup>176</sup>

British officials were attracted to Crofton's system, particularly his concept of intermediate punishment. They saw it as a chance to dispense sentences, either partially or wholly, outside the costly confines of a prison. However, intermediate punishment was more than financial relief for overcrowded prisons. Like Crofton, British officials saw labor reform as a potential tool for combating recidivism. In 1863, a group of English representatives visited Ireland and noted a significant shift in attitudes towards penal reform and labor. One representative wrote, "We [English] have sought to correct [Criminality] by making labor as penal as possible... we have sought to exact labor merely by the fear of punishment and as itself a punishment."<sup>177</sup> The English System, as the visitors described, centered around labor as a form of punishment, primarily using the treadmill and other punitive hand-cranked devices. This approach resulted in fear of labor. However, upon witnessing the implementation of labor in Ireland, these visitors observed that "...work was a privilege."<sup>178</sup> Based on the recommendations of British prison inspectors, the

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<sup>176</sup> Edward Balme Wheatley, *Observations on the Treatment of Convicts in Ireland, with Some Remarks on the Same in England, by Four Visiting Justices of the West Riding Prison at Wakefield* (London: Simpkin, Marshall, and Co., 1862).

<sup>177</sup> Joshua Jebb, *Reports and Observations on the Discipline and Management of Convict Prisons* (Hatchard and Company, 1863), 54.

<sup>178</sup> *Ibid.*

British Parliament adopted an intermediate system that same year. They passed an act allowing prison officials the discretion to permit certain prisoners to serve part, or sometimes all, of their sentence laboring productively outside of the prison walls.<sup>179</sup>

### ***American Labor Reform Experiments***

Through their works and strong advocacy for their reform programs, Maconochie and Crofton significantly influenced American penologists, specifically, as we will see, in the development of their American Reformatory Movement.<sup>180</sup> However, it is essential to note that the American systems did not simply mirror these European experiments. Some early American experiments aligned with Maconochie and Crofton's systems developed independently from their influence. These early American experiments shared Maconochie and Crofton's focus on labor, skills, and education to support prisoners' mental and physical well-being during incarceration and prepare them for a successful life post-conviction.

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<sup>179</sup> *Penal Servitude Act, 16 & 17 Vict. c.99, 1853*; Allen Folger, *Report of the International Prison Congress Held in London, July 3-13, 1872, to the Governor of New Hampshire with an Account of Visits to the Penal and Reformatory Institutions of England, and a Brief Sketch of the English Prison System* (Nashua: O.C. Moore, 1873).

<sup>180</sup> "The Irish System of Prison Discipline and Its Adaptation in the United States," *The Irish System of Prison Discipline and Its Adaptation in the United States* 14, no. 1 (May 1900): 39–52.

In the 1830s and 1840s, Wethersfield State Penitentiary, located outside Hartford, Connecticut, was well-known for its progressive approach to prison reform, mainly focusing on practical inmate labor programs (Chapter 1). Wethersfield had one of the earliest programs to equip inmates with desirable skills. Along with the marketing efforts of the Prison Discipline Society, the reputation of the penitentiary was mainly due to its second Warden, Amos Pilsbury (b.1805), who succeeded his father, Moses Pilsbury, at the age of 32. Despite initial bias due to his young age, Pilsbury gained a reputation as a skilled and successful officer, earning the flexibility to implement his ideas from the Connecticut Legislature. This was not solely because of the appeal of his ideas but also because of his proven efficiency as a manager, especially in managing the prison's finances. Indeed, throughout the history of imprisonment in the United States, financial stability often led to reformatory progression, while financial instability led to regression. Governor Samuel Peters wrote in 1827, "The friends of the penitentiary...have great reason to rejoice at the flattering results of the Connecticut State Prison during the past year." "After paying every expense incurred for the support and management of the establishment, there remains a balance in favor of the institution (approximately \$8,000) ...paid to

the state treasurer."<sup>181</sup> In 1834, the Director's Report from the State Board of Prisons reiterated Pillsbury's success when they wrote that not only were "...the pecuniary affairs of the prison are in a very prosperous condition." The report continued that at the "present condition of the prison, its strict and admirable discipline...proved abundantly that the confidence in [Pillsbury] has not be misplaced."<sup>182</sup> Because of his financial success, Pillsbury earned a degree of flexibility from the Connecticut Legislature to implement ideas as he saw fit. Governor Peters Praised Pillsbury echoed this sentiment: "No warden in the United States has better earned the reputation of a skillful and successful officer."<sup>183</sup>

Pillsbury, a staunch advocate for using productive labor to improve inmate conditions, proposed a transformative approach to the Connecticut State Board of Prisons. He suggested the implementation of "proper workshops" in the state's failing county jails, a proposal that came to fruition in Hartford County, where the old prison was repurposed into a bustling workshop. The Prison Discipline Society of Boston lauded this initiative in 1839, stating, "In this good work...Hartford County has taken the lead. Here, the old prison, where many

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<sup>181</sup> Biographical Sketch of Amos Pillsbury: And a Brief Account of the Albany County Penitentiary., *Brief Account of the Albany County Penitentiary.* (Albany: Joel Munsell, Printer, 1849), 5–6.

<sup>182</sup> *Annual Report of the Board of Managers of the Prison Discipline Society, 1827*, 25.

<sup>183</sup> *Ibid.*

unfortunate beings have received their finishing touch in the education in vice, is converted by its present [managers] into a busy workshop."<sup>184</sup> However, Pilsbury's advocacy was not limited to labor; he also recognized the transformative power of education in combating criminal behavior. In 1843, he established a night school at Wethersfield, providing inmates with instruction in basic arithmetic, reading, and penmanship, enhancing their post-incarceration job prospects. This innovative educational program was later adopted by the Albany County Jail in New York when Pilsbury assumed the role of warden in 1845 and subsequently at Sing Sing in 1858.<sup>185</sup>

Influenced by Pilsbury's approach, the State of Indiana also developed a similar educational program for its prisoners. The prison administrators in Indiana aimed to equip their inmates with vocational training to secure employment after their conviction. Indiana's prison system, which was initially engaged in a contract system, saw a shift in perspective due to progressive prison administrators like Hiram Iddings of the Northern Indiana Penitentiary.

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<sup>184</sup> Prison Discipline Society (Boston Mass.) and Prison Discipline Society (Boston Managers Mass ) Board of, *Annual Report of the Board of Managers of the Prison Discipline Society*, 1836, 72–73.

<sup>185</sup> "Biographical Sketch of Amos Pilsbury," in *Twenty-First Annual Report of the Board of State Charities of Massachusetts*, (Boston: Wright and Potter, State Printers, 1887), 40-44; "Appointment of Amos Pilsbury, as Warden of the New York State Prison at Sing Sing." *The Journal of Prison Discipline and Philanthropy*. Vol. 12, No. 2, 1858; "Appointment of Warden." *The New York Times*. January 14, 1858.

They realized that the menial and low-skill labor provided by contractors, such as firewood processing and twine winding, did not benefit the prisoners in their search for employment. As such, some for-profit penal labor was identified as a potential contributor to, if not the primary reason for, high recidivism rates. When Indiana encountered a decrease in prison contracts after the Prison Board redirected the majority of prison laborers to construct a new prison and retrofit several older ones, it presented an opportunity to develop educational programming.

Consequently, in 1860, the State of Indiana Board of Prisons mandated that prison administrators offer nighttime instructional courses to supplement existing work. These courses encompassed reading, math, carpentry, and machine work, all intending to equip prisoners with skills that could help them secure employment. In his report to the State Board of Prisons, Iddings stated, "It is by teaching the convict to respect himself, even in the Penitentiary, that we hope to keep him within the bounds of healthy restraint." He added, "By teaching him to respect himself, we pave the way for reform... A firm, undeviating policy, appealing to men as rational being, rather than treating them

as brutes, gain the surest and most enduring ascendancy over them. Constant occupation is all-essential in the discipline of a prison..."<sup>186</sup>

Another example was the State of Ohio, which adopted a training-oriented labor approach similar to the one implemented by Crofton's Irish Intermediate Institution. In 1857, Ohio established the Ohio Industrial School, a low-security institution that allowed non-violent offenders to engage in skill-building trades and even leave the facility during the day for work, provided they had secured a job. This approach was a response to the growing concern among American penologists and reformers of the time that prisons were becoming breeding grounds for hardened criminals. The concern was that prisons, by their very nature, could potentially escalate the criminal tendencies of inmates, making even those convicted of low-level offenses more violent and corrupt. Iddings wrote on the matter, "It is the practice of committing to the penitentiary young and inexperienced offenders, who are confined in the same cells as those of long experience in crime, and who are entirely corrupt and depraved. We believe this practice to be most pernicious in its effects, and we hope that the proper authorities may arrest it."<sup>187</sup>

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<sup>186</sup> "Penal and Reformatory Institutions in Indiana," in *Annual Report of the Board of State Charities of Indiana*, vol. 4 (Philadelphia: T. K. and P. G. Collins, Printers, 1845), 244.

<sup>187</sup> "Inspectors of the Eastern State Penitentiary" in *Twelfth Annual Report of the Inspectors of the Eastern State Penitentiary of Pennsylvania, 1845*. (Philadelphia: T. K. and P. G. Collins, Printers, 1845), 17.

The pious penologists of old tried to combat this issue with systems of isolation and silence, but these programs in industrial prisons were impossible to realize. As a remedy, the Ohio prison system developed a two-tier correctional system. Moving from one prison to another depends on behavior, the nature of the crime committed, and the person's criminal history. Prisoners who committed the worst crimes, or those who were ethnic or black, found themselves in the Ohio State Penitentiary. Less "hardened" criminals, by which the courts meant young white men with no previous criminal history, were sent to the industrial school, later known as the Ohio Reformatory. Since prisoners in the reformatory were deemed more reformable than those in the penitentiary, more services were dedicated to them.<sup>188</sup>

Experimentation was not limited to Northeastern or Midwestern states—a grading and mark system developed in South Carolina. The South was not known for its vast or complex penal infrastructure before or after the Civil War. Penal administrators there instead opted to lease out convicts to mining and railroad companies that worked prisoners in faraway camps. However, South Carolina's State Penitentiary's warden Gideon Haynes devised a point ranking system whereby prisoners' productivity and good behavior could earn them better food and living conditions. In some cases, Haynes would reduce or

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<sup>188</sup> E.C. Wines, *Transactions of the National Congress on Penitentiary and Reformatory Discipline, Held at Cincinnati, Ohio, October 12-18, 1870.*

commute prisoners' sentences altogether. Haynes recounted that the promise of reward increased productivity and severely reduced instances of lethargic, immoral, and violent behavior. Indeed, prisoners' behavioral issues decreased to the point where Haynes allegedly ended the use of the lash.

It should be noted that the rating of productivity and behavior was subjective, and any reward, commutation of sentence, or anything in between was at the sole discretion of Haynes and his successors. This empowered Haynes, giving them the unilateral authority to end or increase one's sentence based upon his inclinations. While we do not know the exact figures of these rewards—an omission indeed of design rather than circumstance—we can assume that black prisoners benefited from early release at a far lower rate than their white counterparts, and this assumption also holds for northern prisons.<sup>189</sup>

American penologists early on understood that recidivism could be curbed by training while incarcerated prisoners and with post-incarceration support systems. An interesting but not well-known example occurred at the Massachusetts Penitentiary at Charlestown. An early prison warden, Frederic Robinson, established the "Society for Moral Improvement," a fraternal

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<sup>189</sup> Gideon Haynes, *Pictures from Prison Life: An Historical Sketch of the Massachusetts State Prison, with Narratives and Incidents, and Suggestions on Discipline* (Boston: Lee and Shepard, 1871); E.C. Wines, *Transactions of the National Congress on Penitentiary and Reformatory Discipline, Held at Cincinnati, Ohio, October 12-18, 1870.*; E.C. Wines.

organization to ensure ex-convicts maintained their jobs by resisting vice.<sup>190</sup>

Getting skills to secure a job was not the only obstacle facing ex-cons in nineteenth-century America.<sup>191</sup> They also needed the resources and time to find a job. Prisons of this era turned people out, with no form of support, save for rare cases such as Massachusetts' Society for Moral Improvement. Without a job, money, or a home, it is no mystery why so many returned to a life of crime.

Penologist Henry Cordier, who was warden and Wisconsin State Prison board member from 1864 to 1870, experimented with a penal profit-sharing initiative to solve this issue.<sup>192</sup> The Wisconsin State Penitentiary engaged in for-profit prison labor via the contract system. Unlike other states, the prison drew a small share of the overall profits each year, saving it for prisoner's release. The money distributed upon release would help support prisoners until they obtained gainful employment. This effort was not a mere charity. Indeed, Cordier used this system to squeeze more work out of the prisoners. Under this

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<sup>190</sup> Mass). Prison Discipline Society (Boston, "Pamphlet, Prison Discipline Society.," 1848, Miscellaneous Pamphlet Collection, Library of Congress.

<sup>191</sup> Frederic Robinson, "The Object, Plan, and Prospects of the Society for Moral Improvement of the Convicts in the State of New York," in *The New York State Register, and Annual Political and Miscellaneous Register, for the Year 1822* (Albany: Barber and Southwick, 1822); Frederic Robinson, "Lectures on Criminal Reform, Delivered before the Society for Moral Improvement of the Convicts of the State of New York" (Presented at the Society for Moral Improvement of the Convicts of the State of New York, New York, 1829).

<sup>192</sup> Wisconsin, *Journal of the Senate of Wisconsin* (Madison, WI: Atwood & Rublee, State Printers, 1867).

system, prison labor supervisors tracked each prisoner's daily production. The higher the production, the higher the prisoners' earnings. According to Cordier, this system encouraged greater productivity, reduced unwanted behavior, and reduced recidivism rates.<sup>193</sup>

These examples emphasize the growing focus of American penologists on the nature of labor as a pivotal aspect of prison reform, but there were significant shortcomings. Traditional prison tasks such as breaking rocks or operating the treadmill were deemed insufficient for rehabilitation. Other forms of day-to-day work carried out in most prisons, such as textile weaving and knitting, were predominantly done by women outside of prison. This raised questions about the potential benefits of such training for male ex-convicts, as these skills might not be easily transferable to the outside job market dominated by women. Another crucial aspect of prison reform was the need for post-conviction employment as a preventive measure against recidivism. In this regard, prison administrators were tasked with providing their inmates with work that developed a skill set applicable to industries where they could find employment after their release. However, a significant challenge faced by most state prisons was their dependence on prison contractors to provide work for the inmates. Often, the work provided was low-skilled, menial, or not aligned

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<sup>193</sup> E.C. Wines, *Transactions of the National Congress on Penitentiary and Reformatory Discipline, Held at Cincinnati, Ohio, October 12-18, 1870.*

with traditional gender roles. This meant that the skills learned might not be useful or socially acceptable for the inmates once they reentered society, thereby reducing their chances of successful reintegration.

### ***The Rise of the American Reformatory Movement***

The conclusion of the Civil War in 1865 coincided with a renewed focus on American penal policy, specifically the rise of the Reformatory Movement. This correlation cannot be dismissed as mere coincidence. This sudden interest in prison issues likely related to many soldiers experiencing firsthand the atrocities of war-time prisons and reformers finding greater sympathy for an American prison population full of veterans. From 1865 to 1885, nearly half of the prison labor force in Union states comprised Civil War veterans.<sup>194</sup> Once soldiers fighting for their country, these individuals found themselves in a paradoxical situation. Despite their efforts contributing to the official end of slavery in America, an increasing number of veterans, driven by poverty and desperation, were ironically excluded from this liberation. The 13th Amendment to the United States Constitution, which abolished slavery and involuntary servitude, contained a significant exception. It stated, "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place

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<sup>194</sup> McLennan, *The Crisis of Imprisonment*.

subject to their jurisdiction." This exception allowed for a system of state-sponsored forced labor, effectively enslaving those who had been legally convicted of a crime.

In the post-war era, veterans who had fought to end slavery found themselves ensnared in this system of forced labor. The expanding contract system, under which private manufacturers exploited prison labor to produce cheap goods for the commercial market, was a form of state-sponsored forced labor. This system took advantage of the veterans' destitution, turning them into a source of cheap labor for the burgeoning industrial economy. These veterans, who had once held a sense of self-importance and pride born from their sacrifices during the Civil War, were now subjected to the same system of forced labor they had fought to abolish.

While the climate was ripe for change after the Civil War, a united-front Reformatory Movement in America owes its origin to the work of Dr. Enoch Cobb Wines (1806-1879) and the New York Prison Association (NYPA). Wines' trajectory followed many prison reformers of the nineteenth century. He attended Middlebury College, where he studied theology and began his career as a Minister. After a decade of proselytizing, Wines became an educator interested in legal systems. He published a manuscript analyzing ancient Hebrew law in 1853. In a criticism of ancient and contemporary forms of punishment, *Commentaries on the Laws of the Ancient Hebrews* expounded Wines' belief that

forms of capital, corporal, and penal treatment did not serve society in any productive capacity. He wrote, "...it is objected that, on the principle of the social compact, capital punishment is an aggression upon individual rights, a bloody, popular revenge. This objection overlooks the end for which God wills the institution of Government—the safety, peace, and happiness of his rational creation."<sup>195</sup>

The pursuit of a constructive form of American punishment not only became of interest to Wines, but it became the subject of the remainder of his professional career. In 1860, Wines took a position as Secretary at the newly formed New York Prison Association (NYPA). NYPA was akin to the modern "friends" group. It was a private organization separate from the official operations of the state prison system, though there were many personnel crossovers. This type of organization was not new, with the earliest organization of this type (Philadelphia Society for Relieving Distressed Prisoners) existing as long as imprisonment itself. What separated NYPA from earlier groups was its explicit foundation as a group with a mission to promote the replacement of barbaric penal punishment with new reformatory programs.<sup>196</sup>

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<sup>195</sup> Enoch Cobb Wines, *Commentaries on the Laws of the Ancient Hebrews; with an Introductory Essay on Civil Society and Government* (Philadelphia: Presbyterian Board of Publication, 1853), 72.

<sup>196</sup> *Annual Report of the Executive Committee of the Prison Association of New York*, Assembly document (New York (State). Legislature. Assembly) (Albany: Argus Co., printers, 1861).

NYPA was the first group to be founded to promote reformatory programs, and its members established the foundation of "reform" in America for the next century. Indeed, settling on the definition of "reform" was the inaugural task at the first NYPA annual meeting in New York City. The most crucial question was the metric of what separated an unreformed and reformed criminal. The members settled on the concept that a "reformed convict" was released as a productive member of society and avoided returning to jail upon release. Settled on a definition of reform, NYPA needed to settle on a reformatory program to advocate. In the spirit of Louis Dwight, a generation earlier, the NYPA board of trustees voted to fund an international study of penal institutions' reform programs.<sup>197</sup>

Enoch Wines, along with attorney Theodore Dwight, took charge of the study, the completion of which took four years. It carried Wines and Dwight to forty American and Canadian prisons and returned forty-five detailed questionnaires from other institutions; the report was the most ambitious American penal survey to that point. NYPA agents collected the data and the men's anecdotal observations and compiled their findings in a four-hundred-

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<sup>197</sup>Ibid, 51.

page report presented at the Fourth Annual Meeting of the New York Prison Association in 1865.<sup>198</sup>

*The Report on the Prisons and the Reformatories of the United States and Canada* set two critical precedents, as the findings were published in 1867. First, it secured labor as the preferred tool in American reformatory programs. Considering the deep, complex, and foundational relationship labor had with imprisonment starting in eighteenth-century America, it should be no surprise that these American reformers also viewed prison labor as necessary. Wines espoused this commitment to labor in the *report*. Labor was more important than punishment. Frederick Wines wrote that "... neither intellectual nor ethical development is possible without labor, and religion demands of every man, that by training and effort, he shall make the most of himself and do the most for the world that the extent of his talents will permit." He continued that "[work]...real and productive, is not only a means of bodily health and strength, but it compels thought, thus awakening and molding the mind, and in many ways, it reacts favorably upon the moral character of the workman [Prisoner]."<sup>199</sup>

The second precedent set by the *report* was the incompatibility between American reformers' expectations for what labor should accomplish and the

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<sup>198</sup>E. C. Wines and Theodore W. Dwight, *Report on the Prisons and Reformatories of the United States and Canada, Made to the Legislature of New York, January 1867* (Albany: Van Benthuysen, 1867).

<sup>199</sup> *Ibid.*, 60.

existing labor system dictated by the powerful contract system. In the report, Wines and Dwight decried the state of national prisoner employment, writing that the contract system "...seemed a process adapted to crush out every noble aspiration...from the breasts of those who were subjected to its operations." "They are all [prisoners] lacking in supreme devotion to the right aim...all lacking the aptitude and efficiency of their instruments, and all lacking in the employment of a wise and effective machinery to keep the whole in healthy and vigorous action."<sup>200</sup> Under the current contract system, NYPA reformists believed that labor was merely a tool for punishment and a mechanism of capital opportunity. They argued that prison labor needed to focus on industrial education alongside religious instruction, that "...would teaching and train the prisoner [so he might] resist temptation and be inclined to lead in an upright, worthy life."<sup>201</sup>

Within the report, the surveyors outlined their belief that they found, albeit in disparate places, the building blocks upon which NYPA could build an effective reform program based on labor. The Midwest, where some dogmatic American prison traditions did not exist, hosted a series of exciting innovations. For example, the power and hold of contractors over prison labor were not

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<sup>200</sup> Ibid., 62–67.

<sup>201</sup> Enoch Cobb Wines, *The State of Prisons and of Child-Saving Institutions in the Civilized World* (New York: J. Wilson & Son, 1879), 33.

strong there, leading to the possibility of experimentation. The programs the report highlighted as worthy of exploration, if not experimentation, all revolved around using productive labor as a metric and tool of reform. Among the most influential experiments were those that paid prisoners, allowed them to save money for their release, focused on education and training to prepare inmates for life on the outside, and used productivity as a metric for parole.

In Detroit, NYPA found the only American experiment worthy of being called reformatory.<sup>202</sup> The Detroit House of Corrections was under the penologist Zebulon Brockway's leadership (1827-1920). Brockway, a New Englander born in Lyme, Connecticut, was a disciple of the penal labor. Before going to Detroit, Brockway cut his teeth at the Wethersfield Penitentiary in Connecticut, where he dealt extensively with prison workers and outside contractors as one of that institution's principal officers. However, once Brockway was charged with an institution, he successfully melded training programs, reward systems, an individualized criminal treatment in the spirit of Crofton. Brockway professed his belief that labor was essential for reform. He wrote, "I feel that there are very gross defects in the prison system of the land...that the time has come for reconstruction. There is doubtless...a system of employment for prisoners...[that] would produce a model prisoner indeed." Brockway believed that the system

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<sup>202</sup> Wines and Dwight, *Report on the Prisons and Reformatories of the United States and Canada, Made to the Legislature of New York, January 1867.*

that he implemented at the Detroit House of Corrections provided the answer.

"In my own quite corner here, I am at work...and trust that the practical operation of our system of labor and partial gradation of prisoners will add...to the progress of prison reform."<sup>203</sup>

Gaylord Hubbell, an agent of the NYPA and Warden of Sing Sing Penitentiary, concluded that the system Zebulon Brockway used in Detroit was closest to an American Crofton System. Brockway had noted success in maintaining control over his prisoners and curbing recidivism. He used labor as an effective tool for rewarding prisoners and punished nonproductive prisoners through intense bouts of isolation. However, what made Brockway's program stand out was his careful collection and analysis of prisoner data to make customized and individualized plans for treatment. Brockway's experimentation with individualized treatment plans coincided with emerging scholarship on environmentalism or the view that criminality resulted from individual upbringings and environments. The success and allure of Brockway's program prompted NYPA to look back across the Atlantic. They sent Hubbell to Ireland, where he visited the institutions under the command of Crofton himself. In 1865, at the annual NYPA meeting, Hubbell presented his findings to the Association, asking them, "...can the Irish (Crofton) System be adopted to our advantage in

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<sup>203</sup> Ibid., 344.

our own country?" He answered his rhetorical question: "For my own part, I have no hesitation in returning in affirmative answer, with emphasis, to the question."<sup>204</sup>

Determined to see the Crofton System flourish in America, Hubbell not only relayed his positive experiences in Ireland, but he, Wines, and Dwight laid out the blueprint for a new type of American penal institution: the reformatory. New York once stood as the guiding light in the world of penology; it would once again serve that role in constructing this new prison. Unlike the prisons of the past, which focused on religious penitence and labor punishment, this new institution would focus on academic learning and labor training to prepare convicts for a post-conviction existence. The American Reformatory system proposed by Hubbell would focus its efforts across three stages of reform, or what Hubbell referred to as tiers: Tier 1 put new inmates into solitary confinement, Tier 2 consisted of labor and industrial training, and Tier 3 focused on post-conviction labor. How a prisoner would transition from one tier to the next was based on what Hubbell described as a careful system of classification of prisoners based on marks.<sup>205</sup>

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<sup>204</sup> Prison Association of New York, *Annual Report of the Executive Committee of the Prison Association of New York*, 1867, 186.

<sup>205</sup> *Annual Report of the Executive Committee of the Prison Association of New York*.

### ***The Reformatory Incarnate***

After an intensive six-year period of comprehensive surveying, detailed reporting, rigorous debating, and meticulous extraction of valuable components from prison reform programs across the globe, the NYPA and an expanding network of similar statewide, volunteer-driven prison reform organizations consolidated their efforts at the inaugural meeting of the National Prison Association, also known as the Congress of Cincinnati (Congress), in 1870. The Congress was a substantial gathering, boasting over 250 delegates from North America and Europe. The event was characterized by intellectual exchange, with speakers presenting thirty-four papers and an array of reports, including the NYPA survey. A significant outcome of the Congress was adopting a "Declaration of Principles." This declaration served as the bedrock of the Reformatory Movement and established the blueprint for a nationwide reformatory model that would persist for the subsequent century.

Contrary to traditional prisons, this new Reformatory would be an institution constructed on the principle of reform. It functioned as a transformative machine that absorbed society's criminals. Armed with the tools of education, hard work, and religion, administrators endeavored to leverage this institution to reform these individuals into productive members of the American industrial class. This represented a significant shift in the approach to

handling criminal behavior, moving from mere punishment to a focus on rehabilitation and societal integration.

One of the top agenda items was to discuss a new institution proposed by NYPA and the New York Board of Prisons. The ideal image of an "American Reformatory" adopted by Congress was an institution that would transform broken criminals into productive citizens, a feat achieved by treating "...the criminal, not the crime...."<sup>206</sup> American reformatories would use labor to subject convicts to "...vocational instruction and constructive labor...", supplying them with the skills and temperament needed to work in a post-incarceration environment.<sup>207</sup> Then Governor Rutherford B. Hayes clarified that imprisonment needed to move its focus from punishment to reform, that the "...object [of discipline and labor] should be the convicts' moral regeneration...not the infliction of vindictive suffering".<sup>208</sup> Administrators of these reformatories would be professionally trained penologists and criminologists, unshackled by the burdens of political appointment and the pressures of private contractors.<sup>209</sup> Administrators would use a Crofton-style mark and tiered system to promote prisoners' adherence to reform goals, and a system of classification and

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<sup>206</sup> American Prison Association, "Declaration of Principles."

<sup>207</sup> Ibid.

<sup>208</sup> E.C. Wines, *Transactions of the National Congress on Penitentiary and Reformatory Discipline, Held at Cincinnati, Ohio, October 12-18, 1870.*, 541.

<sup>209</sup> Robert H. Wiebe, *The Search for Order, 1877-1920* (Princeton: Hill and Wang, 1966).

monitoring would ensure that each convict received a case-by-case treatment plan. Finally, the reformatory would establish a system to monitor and support prisoners post-release to curb recidivism.

APA and NYPA were all in on constructing a brand-new American Reformatory, which would soon become a reality. The year before the Congress, NYPA used its growing influence to lobby the New York legislature to authorize a new commission to lead in the construction of an industrial reformatory in 1869, as was recommended by NYPA. Although this new reformatory was to be a New York institution, it was a national experiment, with the plans and program for the prison solidified at the Cincinnati Congress—the industrial component of the reformatory established labor as a tool that would both reform and reduce recidivism. The focus had shifted from the convicted to the post-incarceration (or rather, the focus was on what prisoners would be doing post-incarceration). The Congress' keynote speaker, Zebulon Brockway, addressed his peers, "It is time that the reformations of prisoners during their imprisonment are indispensable, for the return to society discharge prisoners unreformed is to poison it with the worst elements possible; And to retain them in prison

indefinitely while affording at the same time protection from their evil influence when imposing burden impossible to be born." <sup>210</sup>

The discrepancy between the Congress of Cincinnati's idealized version of a reformatory and the reality that became Elmira Reformatory in 1876 was more comprehensive than most reformists would care to admit. Various components of the Reformatory Movement—i.e., the construction of specialized institutions, replacing contract labor with industrial training, hiring professional penologists, and the case-by-case strategy—did not coincide evenly or equitably. Piecemeal adoption of these programs caused Brockway much distress. For Brockway, indeterminate sentencing was one of the most useful theoretical reformatory tools. Intermediate sentencing was the ultimate expression of the Reformatory Movement's belief that no one-size-fits-all punishment existed. Under indeterminate sentencing, courts could sentence convicts to variable terms in prison rather than fixed sentences. Like the Irish Intermediate system used by Walter Crofton, the length of a convict's sentence was determined by their reform progress while in prison. While ideologically, this put sentence length into the hands of prisoners themselves, in reality, it gave the power to extend or limit sentencing directly into the hands of prison administrators. In either case,

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<sup>210</sup> Z. R. Brockway, *The Ideal of a True Prison System for a State.: A Paper Read Before the National Congress on Penitentiary and Reformatory Discipline at Cincinnati, on October 12, 1870* (1870).

indeterminant sentencing would have been a significantly effective tool for Brockway—it would serve as the biggest carrot and stick he could have hoped for. The problem for Brockway was that intermediate sentencing did not become law in New York State for another four years (1880). Brockway later lamented this issue in his autobiography, stating that the first years of Elmira were the toughest because he did not have the flexibility to reduce or sometimes extend inmates' sentences.<sup>211</sup>

Another major tenant of the idealized reformatory was that labor would be used to instruct and prepare convicts for a life post-conviction. This meant the common unskilled labor under the oppressive contract system needed to go. However, this was not the case in Elmira. When Elmira opened in 1876, its first group of inmates came from Auburn Penitentiary, and they had been convicted with determinate sentences; laboring under the oppressive contract remained a burdensome punishment at Elmira.<sup>212</sup>

By 1880, indeterminate sentencing was an option, giving Brockway enormous power over his prisoners' work habits. Working with the dual systems of indeterminant sentencing and contract labor, Brockway operated Elmira under the assumption that labor was a privilege, that prisoners would gladly

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<sup>211</sup> Z. R. Brockway, *Fifty Years of Prison Service*. (New York: Charities Publication Committee, 1912).

<sup>212</sup> *Ibid.*

work if it meant they could potentially reduce their sentences.<sup>213</sup> The promise of early release seemed not enough to compel prisoners along Brockway's reform path. Brutally, Brockway made forced labor the best option among a small selection of terrible choices. The grading system in Elmira, which had been so instrumental in the Reformatory Movement, was a device of control, not reform.

Like Crofton's Irish System, administrators at Elmira separated prisoners into three grades; there was no intergrade mingling. Members of the first grade were those who had recently arrived. Guards deprived Grade 1 prisoners of company, labor, reading material, or anything to occupy them; they were essentially in solitary confinement. Brockway kept Grade 1 prisoners in this state until they had earned enough "marks" to move to Grade 2. Driven to the point of madness, prisoners would do anything to reach Grade 2 and be unlikely to do anything that would reduce their grade back to 1. Grade 2 marks were awarded for following the rules, respecting guards, keeping cells in order, etc. The minimum time one could stay in each grade was six months, but there was no maximum, ensuring that especially refractory inmates would remain solitary. Guards forced Grade 2 prisoners to work in the prison shops that the contractors ran. Prisoners in Grade 2 were also subjected to a series of educational training

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<sup>213</sup> New York State Legislature, *An Act to Establish a State Reformatory for Young Offenders*, vol. 444, 1876.

programs, including primary and physical education, but only after the contract system was wholly outlawed in New York state.

Grade 3 at Elmira most heavily relied on the new practice of indeterminate sentencing, precisely the concept of parole and probation. When a prisoner earned early release, the shadow of imprisonment followed them. When prisoners earned high enough marks, they could move to Grade 3, which allowed them to work outside the prison walls during the day, or sometimes were released altogether to work, albeit under close monitoring. Under Grade 3, the community, specifically those the prisoners worked for, also gained responsibility and power over prisoners. This system extended the influence of prison labor ideology outside and to the community. Probation and remaining free depended on one's ability to use the industrial training and discipline learned in prison and adapt it to the outside world. Prisoners needed not only to find a job before they could go out and parole but also to maintain a job or risk being sent back to prison under Grade 2. The Reformatory Movement was less about benevolent reform and more about trying to train and tame the working class's criminal elements. The Reformatory Movement, focusing on parole and

post-incarceration support, extended the power of reform outside the prison and into the community.<sup>214</sup>

Despite these setbacks, Elmira Reformatory was a beacon for the Reformatory Movement even before the first brick was laid; its successes and failures would serve as the model upon which other states would try to emulate. But it was a sham. It was not Brockway's uncanny ability to reform American prisoners but choreographed deception that earned Elmira a reputation for success. The Reformatory's most compelling metric—a low rate of recidivism—was a con; those prisoners whom courts sent to Elmira came from the group least likely to re-offend, making it home to the young, the first-time offenders, and the non-violent criminals of New York State. Elmira's prisoners were model inmates because they barely qualified as criminals. Elmira's comprehensive educational and industrial training programs were bolstered by Brockway's budget, a per-prisoner sum that far exceeded the average. Finally, Elmira's success was orchestrated through careful redaction. Reports of physical violence as a tool to keep prisoners docile were swept under the rug.<sup>215</sup> Farce, though it was, Elmira's reputation for success had a lasting legacy and inspired the

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<sup>214</sup> Pisciotta, *Benevolent Repression*. Correctional Association of New York, *51st Annual Report*., Legislative document, State of New York (Albany, N.Y.: State Printers, 1877).

<sup>215</sup> Correctional Association of New York, *51st Annual Report*.

construction of twenty reformatories in the United States between 1876 and 1920.

***Supplementing Prison Labor, The Connecticut Prison Association***

Despite Elmira's real or imagined success, reformatories did not replace penitentiaries as reformists hoped. Twenty-one reformatories were constructed across the United States between 1877 and 1900), but most catered to young, female, and non-violent offenders. As a result, most American prisoners remained in penitentiaries, whose administrators relied on industrial contract labor as their primary tool of control, punishment, and income. The contract system was here to stay—at least until the twentieth century—and if reformists wanted to have an impact, their programs would need to supplement existing forms of imprisonment rather than substitute them. A hybrid system was developed between 1877 and 1910, which saw a continuation of the contract system with supplemental reformatory programs that affected prisoners after working hours and even after their sentence was completed. This section illustrates how reform groups such as the Connecticut Prison Association's attempts to better prisoners inadvertently extended the criminal justice system's influence beyond the prison walls. Other similar reform groups developed in Massachusetts, Michigan, and New York.<sup>216</sup>

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<sup>216</sup> “Report of the Joint Committee of the Massachusetts Legislature on the Treatment and Reformation of Convicts,” in *Massachusetts Legislative*

The first annual meeting of the National Prison Association (NPA) in 1870 did more than set the goals for the Reformatory Movement. At the Annual meeting, NPA member Frederick Weins expressed his view that the best system to discharge convicts was by voluntary Association disconnected from the prison system.<sup>217</sup> This included the "Prisoners Friend Association," later called the Connecticut Prison Association, which was founded in 1875 by NPA founding member and Hartford Mayor Timothy Allen and many Connecticut businessmen, religious leaders, judges, and a large number of female reform advocates who remained unnamed.<sup>218</sup>

CPA's reformatory objectives aligned with NPA in many ways. These included advocating punishment "to benefit society by the reformation of criminals; to assist prisoners in the work of self-reform; to promote reformatory systems of prison management; to discharge convicts in living honorably; and to cooperate in the repression of crime."<sup>219</sup> Since Connecticut's prison population

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*Documents*, vol. 9 (New York: State Printers, 1895); "Prison Association of New York: Eleventh Annual Report," in *Annual Reports of the Prison Association of New York*, vol. 11 (Boston: State Printers, 1883).

<sup>217</sup> E.C. Wines, *Transactions of the National Congress on Penitentiary and Reformatory Discipline, Held at Cincinnati, Ohio, October 12-18, 1870*.

<sup>218</sup> The CPA was not totally independent from the state and this may be why there was not a lot of criticism of the state system indeed, there was about a \$2700 appropriation as well as the salary for John Taylor paid for by the state

<sup>219</sup> Connecticut Prison Association, *Annual Report of the Connecticut Prison Association* (Hartford: Connecticut Prison Association, 1880), 3.

did not demand specialized institutions such as a reformatory, the CPA focused its efforts on post-conviction support for penitentiary prisoners.<sup>220</sup>

CPA's focus on post-conviction support was rooted in the reform labor ideal—the concept that labor could reform prisoners by giving them the tools to become productive members of society. CPA members, including religious leaders and an emerging professional criminologist, brought together the religious ferment of the second great awakening and theories such as Social Darwinism. Social Darwinism was a bridge between religious and scientific explanations of crime. It bridged older Protestant conceptions that economic success was evidence of God's blessing with new theories that biology and environment played a role in economic status. With economic success as the benchmark of a moral and productive life, this left prisoners, devoid of economic success or even steady work ethic, amongst the lowest rungs of society.

If a strong work ethic equated to economic success, the benchmark of a moral and productive life, then CPA members would advocate for labor reform programs that instilled work ethic among prisoners. The CPA members used this paternal reform rhetoric to impose their will on a population that may or may not have benefited. In an 1879 report, CPA agent John Taylor summarized CPA's

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<sup>220</sup> Gordon S. Bates, *The Connecticut Prison Association and the Search for Reformatory Justice*, Driftless Connecticut series (Middletown, Connecticut: Wesleyan University Press, 2017).

stance that criminality was caused by a combination of weakness from within and pressures from without. Weakness from within was often attributed to a moral deficiency that could be cured through good moral and religious instruction. External pressures, namely the chaos of urban life, could exasperate moral weakness.<sup>221</sup>

Connecticut's penitentiary system was known to have a diverse and robust labor program that likely provided prisoners with several employable skills. Nevertheless, "In the United States generally, comparatively little attention is paid to the fate of the prisoner who is released from prison."<sup>222</sup> Francis Wayland, CPA president, wrote that "with the present system, prisoners are often discharged when it is certain that they will at once return."<sup>223</sup> Prisoners are "turned out to drift into the world where no one desires to employ a convict." 1887 report of the California State Senate stated that "it will be conceded that it is wise and economical, and not alone and humane, to aid every man who

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<sup>221</sup> *The Journal of Prison Discipline and Philanthropy* (Edward C. & John Biddle, 1873).

<sup>222</sup> California State Penological Commission, *Report of the California State Penological Commission: In Compliance with Senate Concurrent Resolution No. 5, Passed February 16, 1885 [and Report of W.C. Hendricks to the Penological Commission of California, a Supplemental Or Minority Report of Said Commission]*. (Shoaff, 1887), 82.

<sup>223</sup> Association, *Annual Report of the Connecticut Prison Association*, 13.

wishes to lead an honest life.<sup>224</sup> CPA could not have agreed with this sentiment more. Indeed, 90% of CPA funds went to post-incarceration support.

"The time to assist the convict most is at the moment of his discharge," wrote the chaplain of Wethersfield Penitentiary. Then, he continued, "he needs some kind friends to sympathize with him, encourage him, and put him in the way of honorable employment."<sup>225</sup> CPA provided post-incarceration support by raising and disseminating funds to cover "...expenditures for work clothing when they are discharged; for board while seeking employment; tools to ensure them work at their trade; for tickets to their homes or place of employment and other purposes that the circumstances of each case warrant."<sup>226</sup> In addition, CPA created support temperance groups to steer released prisoners away from alcohol and other vices.

Perhaps the most essential role CPA played was the push for the Connecticut Assembly's adoption of an indeterminate sentence, parole, and probation system akin to neighboring New York's. Other advice of Zebulon Brockway, the leading figure of the American Reformatory Movement, CPA led the charge for this system. In a letter from Brockway to Francis Wayland, he wrote, "The best aid to discharge prisoners is that rendered by prison authorities

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<sup>224</sup> Commission, *Report of the California State Penological Commission*.

<sup>225</sup> Albany County (N.Y.) Board of Supervisors, *Journal of the Board of Supervisors of Albany County*, 1876, 164.

<sup>226</sup> *Hartford Courant*, February 16, 1881, 3.

while holding the prisoner under legal control or on parole by employment and supervision."<sup>227</sup> CPA recruited employers to hire groups of released prisoners, and they developed a system by which they could monitor prisoners' progress. While this might seem like a beneficial program in some ways, it put an enormous amount of power in the hands of volunteer prison reformers and employers, both of whom could report negative behavior to the prison board at the risk of prisoners being sent back to jail. CPA's impact in Connecticut was not small. Wethersfield had an average of 260 prisoners. CPA reported that 130 prisoners were assisted per year.<sup>228</sup> There was evidence that CPA's focus on post-incarceration employment was working. Statistics provided by CPA in 1886 showed that of the 278 total prisoners at Wethersfield, 248 were first-time offenders.

### ***Conclusion***

As this chapter has demonstrated, the post-Civil War era marked a significant paradigm shift in the American prison system. The approach to imprisonment transitioned from an essentially dogmatic and punitive model to one that was ideologically progressive and reformatory. However, despite this dramatic shift, labor remained a fundamental component of the American prison system. Work, which had previously been used primarily for punitive and control

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<sup>227</sup> Brockway, *The Ideal of a True Prison System for a State*.

<sup>228</sup> *Hartford Courant*, January 28, 1880, 2.

purposes, became deeply embedded in the emerging philosophy of reform. While labor served as a tool of control within the confines of the prison, it also played a vital role in transforming prisoners into industrious and productive members of society. Moreover, labor became a conduit through which the prison system extended its influence beyond the prison walls, affecting the lives of the post-incarcerated through post-release work support and structuring sentences.

However, as this chapter has highlighted, the ideology of labor reform often outshines its actual implementation. The prison system was strained by the need for financial self-sufficiency, which imposed undue pressure on these idealistic reform initiatives. In many instances, alternative labor systems became supplementary to older styles of contract labor rather than replacing them as intended. As we will explore in the next chapter, this new system proved particularly vulnerable to financial recession. Starting in the 1870s, contractors began to exploit prisoners, contradicting the intentions of progressive reformers. Work within prisons became more exploitative than at any previous point in history, despite the efforts towards reform. It was not until the prisoners themselves began to push back against this system that further change was initiated. This chapter thus sets the stage for the exploration of these subsequent developments in the history of the American prison system.

## Chapter 3

### CONTRACTORS, ADMINISTRATORS, AND PRISON MUTINIES, 1865-1900

"Prisoners were eager to rid themselves of their superiors, and they acted

accordingly."<sup>229</sup>

--*The Advertiser, 1873*

An unassuming wooden armchair sits in the halls of the Metropolitan Museum of Art, New York, Gallery Number 743.<sup>230</sup> Its form is simple yet elegant, combining unembellished rectangles and gentle curves. A modest inlay of copper and pewter is the only sign that betrays the chair as something special. Museum staff attributes this piece to Gustav Stickley (1858–1942), the American Craftsman Movement leader.<sup>231</sup> Stickley built this particular chair in his

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<sup>229</sup> "Mutiny at Auburn: Attempted Murder of the Prison-Keepers Several Seriously Wounded," *The Advertiser*, November 1, 1873.

<sup>230</sup> "Gustav Stickley | Armchair | American," *The Metropolitan Museum of Art*, accessed May 19, 2023, <https://www.metmuseum.org/art/collection/search/19007>.

<sup>231</sup> *Ibid.*

Eastwood, New York shop in 1903. Material cultural historians have interpreted its form as an act of revolt against the excesses of Victorian opulence. In contrast to Victorian excess, the Craftsman Movement championed a design language that found beauty in simplicity. However, this movement was more than an aesthetic shift; it was a philosophical return to individual craftsmanship amidst a system of mass production that churned out products devoid of human creativity.<sup>232</sup>

It is, therefore, ironic that Stickley developed this aesthetic style with the help of those most deprived of human creativity and expression. Stickley's shift from the production of ornamental Victorian furniture to Craftsman-style sundries coincided with the relocation of his furniture operation to New York's Auburn Prison in 1892. Perhaps his prisoner workers' limited skill dictated some of the shift toward simple designs. Scholars have pointed toward the influence of Quaker and Japanese furniture.<sup>233</sup> Whatever the case, over the next several years, Stickley and a team of prisoner workers produced wooden chairs for public sale. They even made Auburn's infamous electric chair, perhaps the most spartan, austere, and simple chair produced by the American Craftsmen Movement.<sup>234</sup>

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<sup>232</sup> Stephen Gray, *The Early Work of Gustav Stickley* (Turn of the Century, 1987).

<sup>233</sup> Ibid.

<sup>234</sup> Gustav Stickley, *Craftsman Furniture: Made by Gustave Stickley the Craftsman* (Place of publication not identified: G. Stickley, 1913).

Stickley was a latecomer to the contract prison labor; New York prison administrators popularized the practice in the 1820s. Since then, private manufacturers struck deals with prison administrators to harness inmates' untapped labor potential for producing goods sold on the open market.<sup>235</sup> By the convenience of location, Stickley chose the Mecca of prison labor.

Metaphorically and literally, convict labor laid Auburn Prison's cornerstone in 1816. Here, the convicted were pressed into service as stonemasons, carpenters, and blacksmiths, laboriously erecting the walls of their future confinement, brick by brick, bar by bar. In 1821, Auburn's first Warden, Elam Lynds, officially instituted the "Auburn System," which advocated hard labor during the day and solitary confinement at night.<sup>236</sup> Auburn's administrators quickly gained infamy for their institution as the center of forced penal labor. Bolstered by the endorsement of religious and social reformers of the mid-nineteenth century, the other industrial states replicated the Auburn model across the nation.<sup>237</sup>

Administrators contracted with private manufacturers in these sites, who gladly

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<sup>235</sup> Gildemeister, *Prison Labor and Convict Competition with Free Workers in Industrializing America, 1840-1890*.

<sup>236</sup> Gustave de Beaumont and Alexis de Tocqueville, *On the Penitentiary System in the United States: And Its Application in France; with an Appendix on Penal Colonies, and Also, Statistical Notes* (Carey, Lea & Blanchard, 1833), 43.

<sup>237</sup> *The Quarterly Christian Spectator: Conducted by an Association of Gentlemen for the Year 1828*, vol. 10 (New York: Durrie, Peck, & Co., 1828).

hung their shingles on the gates of American prisons, ready to exploit this captive workforce.

The notorious Auburn System was a coerced labor mechanism that persisted beyond the abolition of slavery. In terms of its magnitude, reach, and intricacy, it was rivaled only by slavery itself. To give it scale, when Gustav Stickley leased a small space in the Auburn shops, he was only one of many who kept the 1,200 prisoners of Auburn toiling away. On an average year, this system, stretching across the industrialized north, Midwest, and even west, amassed a staggering 29 million dollars.<sup>238</sup> These prisons' furniture, stove casting, machinery, and textile shops enriched the prison profiteers who reigned supreme over this system. They exploited this scheme with unabashed power and impunity until they could not.

While private manufacturers permeated state prisons in the United States from the 1820s through the twentieth century, this chapter focuses explicitly on the post-Civil War era when the prison contracting system was at the height of its power and scale. After 1865, prison profiteers skillfully harnessed the labor power of prisoners to produce goods for an ever-expanding

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<sup>238</sup> Secretary of the Interior and U.S. Commissioner of Labor, *Convict Labor*, 1873; Secretary of the Interior and U.S. Commissioner of Labor, *Convict Labor*, 1874; Secretary of the Interior and U.S. Commissioner of Labor, *Convict Labor*, 1875; Secretary of the Interior and U.S. Commissioner of Labor, *Convict Labor*, 1876; Secretary of the Interior and U.S. Commissioner of Labor, *Convict Labor*, 1877.

market. While pursuing profit was undeniably their paramount motive, this chapter reveals more complex motivations. These facilities were not just profit-making factories; they also functioned as incubators for aspiring manufacturers and innovative artisans, providing them a platform to experiment, innovate, and grow.

This chapter also illustrates that private manufacturers were not outsiders infiltrating American prisons but rather welcomed participants in the prison system. The relationship between contractors and prison administrators was vital to the operation and evolution of the prison system throughout much of the nineteenth century. Contractors brought labor-intensive opportunities into prisons, becoming essential partners to prison administration to manage, regiment, discipline, and control prisoners.

The unbridled success of the post-Civil War Contract system was short-lived. Between the Panic of 1873 and 1890, the contracts system began to wane with the changing economic and social conditions. This financial crisis sent tremors through the marketplace for prison-produced goods, rattling the once-stable position of the prison profiteers. Suddenly, on shaky ground, the reaction of contractors was immediate and severe. They implemented aggressive cost-cutting strategies to counteract the economic fallout and ramped up demands for increased productivity. This extreme response, however, resulted in an

oppressive regime characterized by escalating violence and pervasive malnutrition among the prisoners.

Furthermore, the long-standing belief that prison labor was a rehabilitative tool beneficial to the inmates started to crumble. The façade of benevolence was eroding, revealing a system fraught with exploitation and hardship. This combination of factors signaled the beginning of a seismic shift in the structure and function of the American prison system. Moreover, the harsh conditions created an environment that empowered critics advocating for reform and incensed prisoners.

For several months in 1873, New York journalists painted a grim picture of the conditions within the industrial workshops of Auburn and Sing Sing prisons. Their reports indicated conditions had become so unbearable that guards feared a widespread rebellion. Prisoner workers were starved, the pace of work was increased, and the workdays stretched to unbearable lengths. Further, prison labor, long touted as beneficial to prisoners' well-being, lost any semblance of reformatory power in this environment, which both emboldened the reformist detractors of the system and antagonized prisoners.

Prompted by these grueling conditions, at an increasing rate between 1873 and 1900, prisoners staged an unprecedented series of labor strikes, often referred to as "mutinies" by prison officials and the press. The prisoners were responding not only to the strains of the contract system, magnified by the

financial depression of the 1870s, but also to the inherent shortcomings of the system as a tool for penal reform, which was its primary purported justification. Exhausted, famished, and facing a bleak future upon release, prisoners found common ground across ethnic, racial, and social divides through their shared ordeal. Their united stand against the contract system brought their plight into the public eye, even eliciting sympathy from the American press and the advocates of the American Reformatory Movement. For the first time in American history, a significant portion of the public became acutely aware of the brutal reality and corruption within their fortified institutions. Whether consciously or inadvertently, the prisoners themselves became the catalysts for the significant changes that ensued.

This chapter concludes by depicting the brutal reality of how an economic downturn undermined the contract system's profitability and humanity. Escalating tensions marked this period, forming a volatile triangle between contractors, prison officials, and prisoners. The chapter then proceeds to argue that prisoner acts of rebellion against the inhumane contract work sowed the seeds of future penal labor reform. These acts of defiance, born out of desperate circumstances, played a pivotal role in instigating change, ultimately leading to a seismic shift in the landscape of penal labor in the United States.

### ***Prison Profiteers***

The emergence of the prison contract system between the 1820s and the 1870s developed in response to two significant changes. Firstly, industrialization led to an increased demand for manufactured goods and, consequently, a demand for factory labor. The prison contract system emerged as a solution to this problem, providing a readily available and cost-effective pool of labor. Secondly, the same period also witnessed a substantial influx of inmates into the prison system. As the nineteenth century progressed, societal changes, immigration, urbanization, and shifting laws led to higher incarceration rates. The prison contract system served to help manage this growing prison population by providing a structured environment within which prisoners could work and occupy their time and energy.

Significant societal, economic, market, and industrial transformations paved the way for the contract system, yet they do not reveal why private contractors decided to engage with the prison system. The option of prison contracting was not appealing to manufacturing firms. Esteemed industrialists and renowned companies avoided such practices, effectively confining prison contracting to the domain of emerging, experimental, and nascent manufacturing businesses. Since the practice's inception, prison contracting has been considered a dirty business, particularly in the post-Civil War era. How contractors earned a living was increasingly controversial and went against tenants of moral middle and upper-class sensibilities of the bourgeois Victorian

values. The author and social critic George Washington Cable described the practice as a "legalized robbery."<sup>239</sup> Another social reformer who specifically criticized prison contractors was Helen Campbell, who argued that prison labor for private gain was a form of slavery.<sup>240</sup> Likewise, the social reformer Josephine Shaw Lowell wrote in her book "Public Relief and Private Charity" that prisoner "factories carried on by contractors are simply a revival of the old slavery...It is undoubtedly a mistake to allow private individuals to make money out of the labor of prisoners...the whole system is vicious and demoralizing. It tends to fill the prison with people who should never have been there and to make criminals of those who might have been reformed."<sup>241</sup>

Simply, prison industries were not one in which many would take pride, and it was something that most contractors committed to for a limited period and hoped to move on. In the 1870s, this stigma was all the more acute as reformers and politicians began to question the integrity and effectiveness of the contract system as a suitable form of employment for American prisoners. The attacks on these individuals were not light. Cartoons often portrayed contractors as grossly overweight barons holding malnourished prisoners by the ankle as

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<sup>239</sup> George Cable, "The Convict Lease System," *The Atlantic*, no. 53 (March 1884): 336.

<sup>240</sup> Helen Campbell, *Prisoners of Poverty: Women Wage-Workers, Their Trades and Their Lives* (Little, Brown, 1887), 272–273.

<sup>241</sup> Josephine Lowell, *Public Relief and Private Charity* (Macmillan, 1893), 197.

pennies fell from their pockets. One cartoon illustrated a prisoner's family freezing in the cold winter while the fat cat of prison profits stuffed himself on the bounties of forced labor. Cartoons were the lighter of insults.

The harshest critics called the contractors despotic industrialists devoid of Christian values.<sup>242</sup> Some even went as far as to call the contractors northern slavers. These reformers, often drawn from reputable industrial families who were similarly interested in the temperance movement, increasingly valued the importance of the environment in their own lives and imposed this on their perspective of prisoners. However, under the despotic rule of contractors, American prisons were the furthest environment imaginable from one that would help reform America's criminal population.<sup>243</sup> So, on one side, there were good Christian industrialists and demonized slavers on the other. Of course, "unfair competition" from prison contracts was another reason industrialists participated in this debate, but that is a story to be explored another time.

Despite its criticisms, smaller operators ventured into the contract system in significant numbers, although some large manufacturing

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<sup>242</sup> National anti-convict-contract association and L. D. Mansfield, *Proceedings of the National Convention, Held at Chicago, August 26th, 1886. Together with Other Interesting Matter Relating to Convict-Contract Labor*. (Chicago: Pub. by the Association, 1886).

<sup>243</sup> Clifford E. Clark, "Domestic Architecture as an Index to Social History: The Romantic Revival and the Cult of Domesticity in America, 1840-1870," *The Journal of Interdisciplinary History* 7, no. 1 (1976): 33–56.

conglomerates also participated. As a result, the late nineteenth-century contract system primarily benefited a group of craftsmen and smaller entrepreneurs, labeled here as prison profiteers. These prison profiteers varied in size and scope but shared common characteristics: they profited from prison labor, legally contracted with municipal, state, and, eventually, federal prisons to acquire convict labor, operated manufacturing facilities within prison confines, and supplied managers and supervisors, or "instructors," for these penal operations. Regardless of their size, their interest in prison labor was primarily driven by financial incentives.<sup>244</sup>

Prison Profiteers, typically sole proprietors or actively involved stakeholders in small local businesses, perfectly complemented the untapped potential of the prison workforce. They chiefly operated within industries rooted in skilled and labor-intensive craftsmanship rather than engaging with the late nineteenth-century trend toward large-scale production. Their businesses did not hinge upon a high degree of labor division or advanced labor-saving machinery. Instead, they were ideally suited to harness the raw, diverse, and, at best, semi-skilled prison workforce. Often found among the ranks of blacksmiths, mechanics, tanners, casters, coopers, and carpenters, these prison profiteers

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<sup>244</sup> "The Prison Commission: Report to the General Assembly Complete Review of the Subject," *Hartford Daily Courant* (Hartford, Conn., United States: Hartford Courant, May 28, 1872).

were usually drawn from the immediate communities surrounding the prisons. Upon contracting with the prisons, they rarely required more than 50 prison workers, yet their utilization of prison labor constituted over 50% of total prisoner employment in places like Auburn. Multiple proprietors likely operated their businesses concurrently in the machine and casting shops. These pioneers of prison labor capitalized on an unconventional workforce, significantly contributing to the local economy and redefining the landscape of labor dynamics.<sup>245</sup>

Prison workshops functioned as unique industrial incubators, specifically operating under the sole proprietorship model, for individuals who could harness their manufacturing potential. These workshops, within the controlled environment of the prison system, provided prisoners with the opportunity to learn and develop various trade skills. Prisoners could utilize these skills not only to occupy their time productively but also to generate a source of income potential and lay the groundwork for their future reintegration into society post-incarceration.

Some examples of small prison workshop ventures that transitioned into successful independent manufacturing firms include the J&J Thurman Shoe Company, which had its humble beginnings in the Massachusetts State

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<sup>245</sup> Connecticut Bureau of Labor Statistics, *Annual Report of the Bureau of Labor Statistics, of the State of Connecticut* (Hartford: State Printing Office, 1885).

Penitentiary but grew to become one of the more prominent show manufacturers in Massachusetts.<sup>246</sup> Similarly, the Oregon Boot and Shoe Factory launched operations within the Oregon State Penitentiary in 1874.<sup>247</sup> Other intriguing success stories include the Montana Territorial Prison Brewery, utilizing prison labor to brew beer, and the Colorado Cattle Company, which involved inmates in cattle rearing and slaughter.<sup>248</sup> Other examples of small entrepreneurs include the Auburn Saddle Company and Union Tack Company owners. Neither of these was an established manufacturer but ambitious innovators seeking a competitive advantage, which they found within the Auburn and Sing Sing prisons workshops. One of the most exciting examples is that of Jeremiah Wilcox of Wilcox & Co., who, early in his entrepreneurial journey, worked with inmates at the Wethersfield State Prison to develop a galvanizing process that was instrumental in making his company one of the largest producers of marine hardware in the United States.<sup>249</sup> Sometimes, prison

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<sup>246</sup> "State Prison Shoes: The Convicts Are Turning out Large Quantities of Footwear," *The Boston Globe* (Boston, December 12, 1897), 7.

<sup>247</sup> "State Prisons as A Business: An Oregon Industry That Is a Credit to the State," *New York Times*, September 20, 1896, 27.

<sup>248</sup> "San Quentin Prison Mutiny.," *New York Times* (New York, N.Y., United States, 1897); John Ravage, "The Colorado Cattle Company: A Prison Industry," *The Colorado Magazine*, 1966; Gary Forney, "Brewing Behind Bars: The Montana Territorial Prison Brewery," *Brewery Collectibles Club of America* 39, no. 2 (2010).

<sup>249</sup> Statistics, *Annual Report of the Bureau of Labor Statistics, of the State of Connecticut; Report of the Directors of the Connecticut State Prison to the Governor* (Portland, Conn.: Press of Edward F. Bigelow, 1895); *Biennial Report of the Connecticut Prison Association*, (Hartford: The Hartford Printing Co., 1903);

profiteers, like Gustav Stickley of Stickley Furniture, were first or second-generation immigrants. These individuals capitalized on prison labor to mitigate business entry costs, providing them with a unique avenue for economic opportunity and growth. These examples demonstrate the potential for prison workshops to serve as steppingstones for successful business enterprises.

Prison profiteers were attracted to the prison's promise of cheap labor and low-risk rental space. Prison laborers earned far less than their free counterparts, primarily because they were not considered traditional employees and thus were not entitled to fair labor practices or wage protections. Prison labor in 1875 in New York cost anywhere from .43 to .58 cents per day when the average American industrial worker earned between 80 cents and one dollar.<sup>250</sup> In some cases, prisoners were not paid at all. Not only was the labor cheap, but so was the space. There was no rental cost for prison workshop space. Instead, that cost was built into the daily labor rate per prisoner. It was common practice for small manufacturers to rent shops in larger factories instead of taking the risk of buying real estate. However, it was not just the low cost these renters sought. They were also looking for a flexible manufacturing space that would benefit the

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Connecticut Prison Association, "Annual Report of the Conn. Prison Association.," *Annual report of the Connecticut Prison Association: v.*; Statistics, *Annual Report of the Bureau of Labor Statistics, of the State of Connecticut.*

<sup>250</sup> U.S. Census Bureau, *Historical Statistics of the United States: Colonial Times to 1970* (Washington, D.C.: Government Printing Office, 1975), Part 1, p. 346.

experimental nature of manufacturing. Indeed, we can see this with experimental companies, such as Atlantic Screw Company of Hartford, Connecticut, which rented spaces of increasing size in the nearby Colt Armory before their production process was stable enough to ensure that building their factory-made fiscal sense. Prison workshops served as experimental and flexible industrial spaces where would-be manufacturers could bring in their machines, shuffle them around, and take them when they left.

Prison labor was also used to bail out companies in financial hardship. One Connecticut tool company turned to prison labor as a strategic maneuver in response to financial challenges. A significant downturn in their market was triggered following the end of slavery in the United States, which reduced the demand for their products, specifically axes and other cutting tools that had been widely used within the enslaved South. As part of their strategy to mitigate these challenges, The company capitalized on the economic benefits of prison labor. In particular, they sought to reduce labor costs by employing prison labor.<sup>251</sup>

Just because labor costs were low does not mean that prison labor was not without drawbacks. Perhaps most apparent was the danger to the contractors themselves. While many prisoners of the era were incarcerated for

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<sup>251</sup> *Iron Age and Hardware, Iron and Industrial Reporter* (Chilton Company, 1893).

"crimes" that would today be better suited for other social services, there were murderers, rapists, and other violent offenders, some of whom were serving life sentences in these various state prisons. Contractors were frequently injured or even murdered within prison workshops. There was some contracting in reformatories, such as Elmira, institutions for non-violent, first-time offenders.

Regarding safety, reformatories were ideal, but not so much regarding the labor pool. State prisons had the most diverse labor pool; most prisoners were drawn from laboring classes, and many had work experience. Therefore, the best chance a contractor had of getting prisoners with the skills needed for their enterprise was to engage in business with the large state prisons.

Despite which type of institution a contractor engaged with, they were beholden to the existing makeup of the labor pool. The skill level of the prison workforce might be lower than that of free laborers. The prisoners were often untrained, requiring prison profiteers to invest in training with no guarantee of a return on this investment if prisoners were released or transferred. However, there was a curation of prisoners to curb this issue. Prison officials curated prisoners by concentrating on types of labor. They did this through two methods. First, when new prisoners arrived, administrators inquired about their vocation, skills, and abilities and would place them strategically according to those attributes. Augustus Sargent, warden of the Connecticut State Prison, discussed the process. "We ask the men if they have trades." He did admit that there were

flaws in that approach, however, stating "that their answers would hardly be reliable for the record," as prisoners tended to lie about their skills either being greater or lesser than reality to either avoid work or to be placed in a particular situation.<sup>252</sup>

Prison administrators also mitigated this problem through consistency of contract. Since wardens unanimously selected contractors, it was common to see a continuity of business types from one company to the next. For example, furniture makers who left prison labor would almost always be replaced with another furniture company rather than a wholly different industry. This was true of Auburn, which hosted four furniture companies operating between 1871 and 1882.<sup>253</sup> Connecticut's prison wardens bypassed this issue by limiting its once-diverse industrial shops to shoemaking. Consistency of contract and concentration of skills benefited prison administrators who could demand a higher daily rate for a trained workforce and made their prison labor all the more attractive to contractors in that sector.

While smaller carceral capitalist operations dominated New York and Connecticut prison shops, more significant industries became more common in the 1880s and 1890s. These industries were often conglomerates. They relied on

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<sup>252</sup> *Report of the Directors of the Connecticut State Prison to the Governor* (Portland, Conn.: Press of Edward F. Bigelow, 1880, 67-68).

<sup>253</sup> "Sanborn Fire Insurance Maps, Auburn, N.Y.," 1890, 1893, 1900, New York State Archive.

low-skilled labor, more specialized workspace, and specialized machinery. They generally contracted for over 100 prisoners or more, sometimes as many as 500. The size of these operations rivaled free factories in like industries. Specialized machinery and concentration of labor skills ensured these industries had a sense of permanence. One example is the Wethersfield Prison in Connecticut, which, until 1879, had a thriving and diverse industrial shop. Though the population was considerably smaller than New York prisons, about 270, by 1880, all of those prisoners worked in boot and shoe production, employed by three companies unified through ownership: the Clark Ann Holbrook company, Marcy brothers and Co., and Hunt Holbrook Ann Barber Co.<sup>254</sup> By 1885, this shoe making conglomerate had also infiltrated Connecticut's Cheshire Reformatory as well as the Connecticut Women's Prison and Middletown Mental Hospital. Another example includes the Western Shoe Manufacturing Company (still in business), which manufactured boots and shoes at the Prison in Stillwater, Minnesota, and ten other facilities across the state.<sup>255</sup>

### ***Power of the Warden & Oversight Attempts***

It is most often assumed that contractors held the most power in this system since they had the most to gain financially. This is not wholly true.

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<sup>254</sup> State of Connecticut, "Edward O. Peck Testimony," in *Public Documents of the Legislature of Connecticut* (Hartford: State Printing Office, 1885).

<sup>255</sup> Howard Gill, "The Prison Labor Problem," *The Annals of the American Academy of Political and Social Sciences* 147 (1931): 83–101.

Astoundingly, this system supported the near absolute power of a single individual: the warden. Most northern industrial state legislatures and their respective prison boards bestowed the state prison wardens and county sheriffs, who were de facto county jail wardens (Chapter 4), the sole right to lease their convicts' labor to private individuals. This expectedly led to a robust system of patronage and kickbacks to wardens and sheriffs who used their unilateral power to shape prison labor in their image and for their advantage.<sup>256</sup>

Members of the Reformatory Movement (see Chapter 2) introduced several oversight mechanisms to check the power of prison administrators and contractors. By 1873, state prison boards in New York, Connecticut, and Massachusetts, all of which trended toward using statistics and bureaucratic oversight, implemented several tools to stave off corruption and potential prisoner abuses. The first mechanism was reporting. Wardens were required to disclose financial data related to prison industries at the end of each year. Reports included the number of prisoners contracted, the name of the contracting firm, the daily rate per prisoner, product yield, and total annual revenue for the prison. While the warden was required to report statistics and

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<sup>256</sup> Most of these abuses went unreported but in several instances, they were uncovered by progressive reformers. Like in Rock County, Wisconsin. Sources here. Explanations of the financial and political power conveyed to wardens via this system are detailed in the chapters which explore work release as well as the immediate post-contract ban.

earnings, the language and exact nature of the contracts remained sealed on the warden's desk.<sup>257</sup> Information such as hours worked, contractor revenue, or prison expenses related to prison industries was not included. These omissions—whether intended or otherwise—were critical because they would have provided data that illustrated if prisoners were being overworked and if the state was receiving a fair rate from the contractors. Perhaps lawmakers did not care to understand the system's intricacies so long as the prison was financially self-reliant. In many legislative prison reports from the era, the industries contracted were a topic of interest, but the warden was generally not questioned on his choice of contractor since it was his prerogative to receive the best rate for his prisoners' labor.<sup>258</sup> We must not forget that the warden's position was a political appointment and that the person serving would unlikely be held accountable for any activity that would benefit him financially. Benefiting from one's political appointment position was not seen as corruption or abuse to most contemporaries of the time, save for a few nascent prison reform groups. However, some cases of patronage were more blatant than others. For example, the Connecticut State Prison at Wethersfield was dominated by the same three shoe manufacturers (all related through ownership) for nearly three decades. By

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<sup>257</sup> State of Connecticut, "Edward O. Peck Testimony."

<sup>258</sup> "The Prison Commission."

the 1890s, Connecticut's other state prisons, including the reformatory and women's prisons, were also contracted with the same shoe companies.<sup>259</sup>

There were attempts to institute oversight mechanisms in the prison itself, but these efforts were geared toward monitoring the abuses of contractors. In Connecticut, a new type of prison officer, the overseer, appeared in the 1870s after pressure from the newly formed reformist group, the Connecticut Prison Association. The CPA focused on education and recidivism, believing that the contract system's focus on profit was antithetical to their goals.<sup>260</sup> As other like-minded prison associations developed, overseers and other types of state inspectors appeared, but in reality, they were likely accepted by prison managers as a strategy to placate growing criticism rather than do any actual investigation.<sup>261</sup>

By 1878, New York, Connecticut, Rhode Island, and New Jersey, all of which had their private prison association, had state-appointed overseers.<sup>262</sup> An overseer's responsibility was to monitor the various prison production facilities and report on any abuses on behalf of the contractors. The overseer was also responsible for reporting prisoners' work infractions and doling out

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<sup>259</sup> Ibid.

<sup>260</sup> Association, *Annual Report of the Connecticut Prison Association*.

<sup>261</sup> CT Prison Association Annual Reports, 1875-1880, CT State Library

<sup>262</sup> New York (State), "Annual Report of the Inspectors of State Prisons." (1871): 29 v.

recommendations for punishment.<sup>263</sup> This gave the overseers the dual and contradictory role of protecting prisoners from abuses as well as subjecting them to abuses. Aside from that, there were several limitations to the overseer's ability to monitor the activity of the contractors if it was not the wish of the prison's warden. In Connecticut and New York, the overseers were direct employees of the prison, and therefore, their direct superior was the warden. They did not have an external supervisor they reported to at the prison board, which gave the warden a great deal of control over the overseer. It also appears that only one overseer was appointed to each prison, making it difficult to monitor everything going on. For example, the overseer at Auburn split his time between the men's and neighboring women's prisons in 1875, and a single warden controlled both.

Perhaps the most shocking disadvantage the overseers faced in fulfilling their duties, at least on paper, was their lack of industry or craft work training. If labor abuses related to production output existed, say contractors' expectations were too high, the overseer would not even know. They were pencil pushers. When discussing the qualifications for hiring an overseer, Deputy Warden Edward O. Peck of the State of Connecticut prisons said that overseers generally received no industrial training and were university-educated.<sup>264</sup> Pecks' statement

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<sup>263</sup> "The Prison Commission."

<sup>264</sup> Ibid.

suggests that overseers were unqualified to monitor industrial operations and may have been among the first wave of young criminologists and sociologists to find themselves inside the prisons. At least two well-known prison reformers had worked in this capacity. The writer Louis Robinson was an overseer in the Elmira Reformatory in New York after graduating from the University of Pennsylvania. E. Stagg Whitten, lawyer and reform activist of New York's vibrant anti-penal labor movement of the twentieth century, also had a short stint in the New York prison system as an overseer.

### ***The Panic of 1873 and the Brutality of the Contract System***

Between 1865 and 1873, the American prison contract system ascended to unprecedented profitability and power. That success was quickly overshadowed by brutality, violence, and criticism. Various factors converged between 1873 and 1900, instigating a surge in brutality and a dramatic deterioration in prisoners' working and living conditions. A sharp reduction in investment from both contractors and the state in resources and essential amenities for prisoners primarily drove this decline. The brutal system was supported by various states that assisted private manufacturers in keeping up production whilst declining to improve prisoner conditions.

A major cause of worsening conditions was the Financial Panic of 1873 and the increased demand for productivity in a period of limited resources. It seems counterintuitive that a recession would lead to an increase in the

production of prison goods, but this was the case. The increase was due to the legal and contractual arrangements of the contract system and lawmakers and bureaucrats' maneuvers to protect the contract system and prison labor generally. In times of financial hardship, prison profiteers doubled down on production output as a strategy to improve their financial bottom line. By doing so, the purveyors of free industries could cut labor hours to save costs. Contract industries operated on fixed labor contracts for set periods and thus did not have the luxury of cutting labor costs. The result was unprecedented profits and a system that rapidly became unsustainable. The only maneuvers at the prison profiteers' disposal were to cut their losses and default on their contracts or to increase labor productivity and bet on the future market of prison-made goods. For which do you suppose they opted? Even when the prison goods market suffered in this recession, prison contractors pushed prisoners to produce more, resorting to stocking goods in supply houses rather than seeing their contract labor go unused.<sup>265</sup> For example, New York State's production numbers in essential items, shirts, shoes, and socks increased from 1873 to at least 1876.<sup>266</sup>

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<sup>265</sup> Because most of prison-made goods were consumer based and increased during the financial recession, we can guess that many manufactures engaged in stockpiling goods and betting on the future or sold them at an extremely discounted price. In either case, the profitability, due to the low labor cost, would have been ensured.

<sup>266</sup> Correctional Association of New York, *51st Annual Report*.

At the same time, production increased, and working conditions in American prisons worsened. Because contractors were responsible for the care and supply of manufacturing equipment and facilities, their other primary cost-saving strategy was to neglect repairs and maintenance; they even refused to furnish their operations with the proper tools for the manufacturing process. It was a working environment that was both "dangerous" and "inhumane," according to penal inspectors.<sup>267</sup> Forced to work with old manufacturing equipment and inadequate tools, prisoners were subjected to a labor system that was increasingly dangerous and tactile when free labor counterparts became safer and more mechanized. The low cost of prison labor would continue this trend far beyond the recession since it could compensate for any productivity loss in prison factories. Contemporary prison-labor detractors remarked that prison manufacturing lagged free industry counterparts on a technological scale by decades. More and more, the financial success of prison industries lay not in its adoption of better technologies, business, management, or production strategies but in the sheer number of cheap and unwilling laborers at its oppressive disposal.

The increase in production was supported by the activities of lawmakers and bureaucrats who actively assured an alternative market for prison-made

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<sup>267</sup> Ibid.

goods in the state. Indeed, the activities of lawmakers, specifically in New York during this period, is the first known example where they sought to protect prison labor by using the buying power of the state, a system that would later become known as the state-use system. By the 1890s, a hybrid system was in full force, defined by privately made goods for state consumption. Lawmakers used the power of fund allocation to expand prison industries when they should have declined, inadvertently contributing to the system's brutality. In the years leading up to the recession, 1867-1870, state hospitals in New York and Connecticut represented zero percent of all sales for prison-made items. Between 1873 and 1878, state institutions' sales increased to over 43% in Connecticut and 32% in New York.<sup>268</sup> This sudden increase in state patronage for prison-made goods resulted from several factors. First, it was probably cheaper for states to buy goods from their contractors as they were likely able to negotiate a favorable rate. More significantly, it became clear to bureaucrats that a dearth of job opportunities for prisoners would cause a significant issue in American prisons. Without the daily tasks associated with the labor related to the state's contractors, state officials knew that prison administrators would have difficulty organizing and keeping prisoners busy. In Connecticut, an investigator for the prison system commented as much. He said that "...loss of

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<sup>268</sup> "The Prison Commission."

prison jobs at any greater rate...is unsustainable...." "The future of prison labor is now in jeopardy..." State legislatures knew this as well. Calvin Huson, a New York General Assembly member, wrote, "...without penal labor, prisoner idleness will ensue [and] state prisons will be overrun with violence...."<sup>269</sup>

### ***The Death of Prison Labor as Reform***

Contractors' demands for production pushed prison laborers to their limits, administrators passively observed and reaped the benefits, and the state actively supported these activities through state-use contracts and half-hearted oversight attempts. However, it was not just the physical demands of prison labor that worsened. Efforts, once common, to ensure that labor was meaningful and beneficial also declined. Prison contracting had been billed to the public as a critical component of penal reform. Honest hard labor was an essential component of religious penitence for a crime and a vital tool of skill-building to ensure released convicts could find a job or else find themselves behind bars. However, this was a clever marketing tool rather than a realistic goal. Prison labor, like trends in incarceration generally during the period, had become a tool of unabashed convenience for prison administrators.<sup>270</sup>

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<sup>269</sup> Secretary of the Interior and U.S. Commissioner of Labor, *Convict Labor*, 107; John S Perry et al., *Prison Labor an Argument Made Before the Assembly Committee of the Legislature of the State of New York on Prisons, March 7, 1883* (Albany: Weed, Parsons & Co., 1883).

<sup>270</sup> Rothman, *Conscience and Convenience*.

There is a strong connection between the rise of prisoner violence and the increase in work types that would be considered less reformatory, i.e., those that did not teach skills or set prisoners up for post-conviction employment. Not only were contractors demanding more output and longer hours from prisoners, but over time, prison labor contracts favored larger companies that did not wish to train a prisoner workforce. Therefore, what was once dominated by skilled and semi-skilled work now became work dominated by low skill, high output, and a division of labor. Once occupied by many carceral capitalist operations that provided prisoners with variety and skills, prison factories were replaced by the convenience of more significant non-skilled incarceration industrialists. By 1800, the largest employers of prisoners in the United States were shoe, textile, and cordage manufacturers, all representing unskilled work.<sup>271</sup>

Although the transition from small semi-skilled to large-scale prison unskilled industries occurred across the north and at varying rates of change, the Connecticut State Prison at Wethersfield is an interesting example because this change occurred rapidly, and many prisoners experienced both systems. Prior to 1875, Connecticut had a diverse set of contracts operating in its shops. Their industries revolved around the metalworking industries of the Connecticut River

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<sup>271</sup> Perry et al., *Prison Labor an Argument Made Before the Assembly Committee of the Legislature of the State of New York on Prisons, March 7, 1883.*

Valley, and much of the work relied on skilled or semi-skilled prison labor, which required prisoner training.

James "Leroy" Wedding, who served nearly three decades at the Wethersfield State Prison, positively discussed his experience before 1875. Having worked with the prison contractor, the Wilcox Company made "chandlery and carpenter's tools, axes, hatchets, etc." and worked in the prison's cutlery shop for nearly seven years. Wedding recounted that his work had turned him into a master of cutlery trades and that he wanted to pursue the field as his profession upon his release from his first sentence. He traveled to Meriden, Connecticut, a hub for silverware and cutlery production, where he planned to use his skills to find a job. He could not. No matter the man's skill, "...they didn't want anyone from the prison," he recounted.<sup>272</sup> That James was able to develop a skill in prison but then not find employment illustrates just one limitation of penal labor as a tool of reform.

After 1875, the Warden of Wethersfield, E.B. Hewes, decided to contract all prisoners to shoemaking. As a result, Wedding's attitude toward work changed considerably for the negative. Wethersfield's shoe factory engaged in extensive division of labor in which one pair of shoes was passed between eight hands, with each prisoner having a very specified task in which to do, and they

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<sup>272</sup> "The Prison Commission."

were taught that task but none of the others. This benefited contractors and administrators because it limited prisoners' skill sets, rendering them unlikely to successfully leverage their work as a bargaining chip for better conditions. Because prisoners performed routine and repetitious tasks, it was easy for contractors to track production and know when someone might be falling behind or intentionally trying to stint the work. The most considerable impact on the prisoners came in post-conviction employment, which had already been difficult with training—as Wedding stated—but was all the more impossible when no training was given. Some prison industries ensured that the post-convicted would not receive employment in that field. Common prison contract labor post-1880 revolved around large-scale prison textile factories.<sup>273</sup> In the late nineteenth century, loom work was women's work, so how were men being taught to use looms and knitting machines to transfer that to a job outside when those jobs did not exist for them?

As prison work became less skill-based, so did the tangible benefits for prisoners. Dwight Steere, a life prisoner at Wethersfield, reported that the prison was ripe with prisoner grumblings and complaints of the shoe contractors.

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<sup>273</sup> United States Congress House Committee on Labor, *To Rehabilitate and Stabilize Labor Conditions in the Textile Industry of the United States: Hearings Before a Subcommittee of the Committee on Labor, House of Representatives, Seventy-Fourth Congress, Second Session, on H.R. 9072. January 27, 28, 29, 30, 31, and February 3, 4, 5, and 6, 1936* (U.S. Government Printing Office, 1936).

Lawrence Mackey, a 23-year-old prisoner and boot worker, expressed serious discontentment with his job, expressing that it was tough on the hands and grueling on the back. He reported that he was made to stand all day, at least ten hours, with breaks for lunch frequently cut. When other men were sick, Mackey said he was required to take over their responsibilities, doubling his daily duties. When a committee of state legislators asked Mackey, as if he should be grateful, if he would instead work or be idle, he answered that he would rather work than be locked in a cell all day.<sup>274</sup> Some prisoners were more ambivalent than others. William Wells from Bridgeport, 26 years old, was convicted at 17. When William was asked if he has any antagonism towards contractors who benefit from his labor, he replied, "It makes no difference to me who reaps the harvest."<sup>275</sup>

There was little hiding that reformation was not considered in the contract system regarding labor. Augustus Sergeant, Warden of the Wethersfield State Prison, stated that the primary goal for maintaining contract labor in Connecticut was to "keep [prisoners'] minds occupied and give them proper exercise." He continued that prisoners should work diligently. They shouldn't loaf." We must employ these men to keep them in discipline and bodily health."<sup>276</sup> Indeed, Deputy Warden Peck admitted that penal labor at

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<sup>274</sup> "The Prison Commission."

<sup>275</sup> Ibid.

<sup>276</sup> State of Connecticut, "Augustus Sargent Testimony," in *Public Documents of the Legislature of Connecticut* (Hartford: State Printing Office, 1885), 78.

Wethersfield was a "punishment for a crime committed" and "second a tool of reformation."<sup>277</sup> Contractors supplied their prison workshop "instructors." It was the job of these instructors "to go into the shops, and it was their duty to show the men how to work and how to be diligent about it, the same in any factory."<sup>278</sup> The Instructor Waldo W. Goodell, employed by Marcy Bros. and Co., was a journeyman cobbler from E. Twitchell and Co. He claimed that no violence was used to compel people to work, but we know that this is not true. Of all the industries Wethersfield implemented in its program, Peck admitted that shoemaking was the best form of punishment and control. When pressed on the subject of whether contract labor played a significant role in decreasing recidivism, they openly admitted that this was not the case. Their admission hinted at a systemic failure to utilize prison labor as a tool for rehabilitation and reducing recidivism.

Work was becoming less reformatory. There was also an imbalance in the distribution of labor. Contractors were given the authority to select their preferred prisoners at the time of signing a contract. Should the number of prisoners capable of labor decrease due to various circumstances, such as illness or disability, the conditions of the contract were adjusted to accommodate these changes. Only prisoners who were non-disabled and capable of strenuous work

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<sup>277</sup> State of Connecticut, "Edward O. Peck Testimony," 62.

<sup>278</sup> Ibid.

were considered for the labor pool. At the Wethersfield Prison, a specific group of prisoners were rejected from work. These included those unable to perform hard labor, such as the physically weak or sick, African Americans, and a small fraction of women imprisoned there. Prison official Peck confirmed that these excluded prisoners could, in theory, be assigned other less demanding tasks.<sup>279</sup> However, he acknowledged that no such alternative work assignments were established for them. The primary reason behind this oversight was that the prison work program did not incorporate rehabilitation as one of its objectives.

### ***The Clifford Mutiny and Prisoner Resistance***

Patrick "Pat" Clifford was born in 1851 in a small village northeast of Derry, Ireland.<sup>280</sup> Derry is a place of astounding beauty where rolling green fields stretch to the deep blue ocean. However, alas, Ireland's beauty was not enough to hold Clifford. Born on the last leg of that environmental and social scourge known as the Great Famine, the prevailing winds of Irish immigration propelled this son of Ireland across the Atlantic. At 19, Clifford left all he knew, boarded a ship, and journeyed in search of the promises America held for him. However, he arrived in New York to find that promise broken. Clifford unwittingly traded the

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<sup>279</sup> "Women Study Ban on Prison Goods: State and City Federations Hold Joint Session to Learn How to Block Sales. Experts Advise Them Representatives of Retailers Manufacturers and Labor Urge Shoppers' Campaign.," *New York Times* (New York: United States, April 14, 1934).

<sup>280</sup> United States Census Data, Auburn, New York, 1880.

poverty and hunger of his native Ireland for more of the same in the great American metropolis.

Clifford was a physically impressive youngster noted as being both "tall" and "strong," both desirable characteristics in a working man.<sup>281</sup> He was capable, too, having honed craft skills as a blacksmith's apprentice in the Old World. Nevertheless, he found it exceedingly difficult to find work in the bustling New York economy of the post-Civil War.<sup>282</sup> American nativism and antagonisms against Irish immigrants proved insurmountable. Clifford found himself alone in a foreign land without money or family; we need not speculate on his motivations. He turned down a path he saw essential to his survival. We do not know how many times he stole, squatted, or shoplifted before or what other crimes he may have committed, but not seven months after he arrived in the United States, in the dead of winter 1871, a city constable apprehended Clifford after breaking into an apartment.<sup>283</sup>

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<sup>281</sup> Ibid.

<sup>282</sup> The noting of former occupation and physical descriptions of inmates was common prison practice while on onboarding new convicts. Physical descriptions often included stature, weight, hair and eye color, distinguishing features, and scars. These descriptions also commented on the convict's physical virility. Descriptors such as "strong", "strong back", "stout" were often used to demarcate the convicts better suited to hard labor than the "feeble", "sickly" and "weak".; "Prisoner Identification Cards," (Albany, New York: New York State Archives, 1860-1890), New York State Archive, Clifford, Patrick, Prisoner.

<sup>283</sup> United States Census Data, Auburn New York, 1880 and 1890; Clifford, Patrick, Prisoner Identification Card, Auburn State Prison Convict Records, 1860-1890, New York State Archive, Auburn, New York.

The scarcity of work opportunities forced Clifford to commit petty crimes, and in the worst twist of irony, it was only after his criminal conviction that he landed his first job in America. Like most convicts of the time, he did not go directly to jail but instead found himself in a processing facility where penal officers, including newly minted criminologists, examined Pat's physical stature, head circumference, body type, and height. They questioned him about his previous criminality, his upbringing, sexuality, and mental state to understand the circumstances that led him to crime.<sup>284</sup> Pat was experiencing the beginning of a new era of criminology that was ushered in by the Reformatory Movement (Chapter 2), when professionals considered various factors when deciding where and for how long the convicted served.<sup>285</sup> Pat had no criminal record and no known history of violence or theft. Indeed, at only 19, he was an ideal candidate for a reformatory, a new type of progressive penal institution aimed at first-time male offenders under 30. However, since Elmira Reformatory was not yet constructed, Clifford was ultimately sentenced to a facility less appropriate for his case but far more befitting his skill: the growing machine shop at the Auburn State Prison.<sup>286</sup>

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<sup>284</sup> Rothman, *Conscience and Convenience*; Pisciotta, *Benevolent Repression*.

<sup>285</sup> *Ibid.*

<sup>286</sup> "Registers of Male Inmates Discharged" (State Printers, 1894 1816), Registers of Male Inmates Discharged, New York State Archive.

In November of 1873, Pat Clifford, who had been working without a reportable incident in the machine shop for over two years, had enough.<sup>287</sup> One day, Clifford exercised the most profound tool of resistance at his disposal; he laid down his tools and refused to work.<sup>288</sup> The cajoling of the machine shop "instructor," a private contractor named Farley, did little to persuade Clifford to work. When Farley moved to force the inmate to his workstation physically, Pat struck him in the head, and the confrontation resorted to violent blows between the two men. Prison guards rushed to Farley's aid. Clifford was restrained, forced to his knees, and beaten with batons. On most days, this show of routine force would have been enough to end the disturbance, but overworked and hungry, over 150 of Pat's compatriots erupted into an angry mob. Barricading the doors, shop workers took several instructors and guards hostage for over 24 hours. To end their mutiny, they demanded that the workday length be reduced and that the quality and quantity of their food rations be improved. Above all, their actions let everyone know how prisoners felt about the private contractors. The day following the incident, a reporter for the local Auburn paper, the *Advertiser*, summed up this tension with a succinct and dramatic observation. The prisoners,

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<sup>287</sup> In the limited prison records found for Pat Clifford, there is no indicator of any violent acts before this or reprimands.

<sup>288</sup> "Mutiny at Auburn: Attempted Murder of the Prison-Keepers Several Seriously Wounded.," *Advertiser*, November 1873.

forced to the breaking point, "...were eager to rid themselves of their superiors, and they acted accordingly."<sup>289</sup>

Prison work was always hard work. Prisoners typically worked 9 ½ to 10 ½ hours daily with a 1-hour break. At Wethersfield, labor began as soon as it was light enough to work. A bell rang out at daylight, the guards and overseers locked prisoner cells, and they walked lockstep to their shops. Prisoners immediately began working. At 7:00, convicts stopped work for breakfast, formed a line in their shops, and marched apartment their signal into the prison yard. With military procession, men stood in line before lunch buckets. On the command word right, each prisoner turned to their right in the word up and signaled each man to take a bucket upon their left arm. On the word board, they marched in the same manner to the hall where they sat to eat while reading the Bible. Half an hour later, they marched back to their work and remained until noon until the signal was again given, and they marched in the same launch line forward without reading the Bible. At 1:00, lunch was over, and they marched back to their work, where they stayed until 6:00 PM. Time was given for dinner after work, usually about 45 minutes. After work and dinner, they marched to the hall, attended prayers, and went to their cells.<sup>290</sup>

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<sup>289</sup> Ibid.

<sup>290</sup> Phelps, *Newgate of Connecticut*.

The pressures of the contractors described previously exacerbated the rigid structure of prison life. Prisoners were aware of their plight in prison workshops but also generally aware of the unjust nature of contractors and their relationship to the state. James Wedding of Wethersfield was asked, "As a rule, do you suppose the contractor is a cleverer man than the state?" Wedding laughed at this question and answered, "I do."<sup>291</sup> The prisoners at Auburn, Sing, Wethersfield, and elsewhere across the American North first felt and responded to the contractor's escalating regime of brutality. Those prisoners' actions ultimately set events that led to significant changes in prison labor during the late nineteenth and early twentieth centuries. Prisoners resisted the oppression of the contract system in several ways. Many banded together to orchestrate pre-meditated labor strikes known as "mutinies," while others rebelled in spontaneous acts of mob violence, as was the case of the Clifford Mutiny. Both mutinies and spontaneous acts of rebellion could involve widespread sabotage of industrial spaces; breaking machines, destroying raw material, or setting fire to the entire facility was not uncommon. A simple refusal to work was also an effective tool since contractors were on the hook for paying into the prison's treasury based on the number of prisoners contracted within a year, not their output. Unlike free industries that did not pay striking workers, the contract

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<sup>291</sup> "The Prison Commission."

arrangement doubled contractors' losses when prisoners did not work. Though few examples exist, prisoners likely understood this arrangement and exploited it.

Rare sources give us a glimpse into the prisoners' daily and less dramatic struggle against contractors. Writing under the pseudonym "Convict," one prisoner wrote of his experiences working at New York's Auburn State Prison in 1873. "On the third day of my imprisonment... I was nearly dead from the heat and the heavy work in the trip-hammer shop".<sup>292</sup> "Convict" and 80 other prisoners worked for Sheldon & Company, a local New York wagon manufacturer that contracted with Auburn State Prison to produce wagon axles at a labor rate of .58 cents per day per prisoner. The Sheldon & Company contract was only one of several contracts with private manufacturers at Auburn in 1873. Others included an active machine shop, furniture making, shoes, flag collars, and tool making, but the largest operation was shoe manufacturing with the John Dunn, Jr. and Company, which contracted 425 prisoners alone.<sup>293</sup> Machine work and casting commanded the highest daily prisoner rate for a contract, suggesting that certain prisoners' work and skills were more highly valued than others.

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<sup>292</sup> Convict in a convict's Cell, *An Illustrated History and Description of State Prison Life by One Who Has Been There: In Two Parts: One Showing the Cruelties and Horrors of the Old System, the Other, the Reformatory Advantages Resulting from the New ...* (O.A. Browning & Company, 1871), 77.

<sup>293</sup> Ibid, 79.

After just a few weeks working in that trip hammer shop, "Convict" recounted that he "...could not stand it long there".<sup>294</sup> Instead of passively accepting his work, "Convict" conspired and strategized with other prisoners who used their influence and labor power as a tool to bargain with the prison foreman. After working for several months in the trip hammer shop, "Convict" was moved into a cell with a prisoner whom he referred to as "Old George," and over a short period, "Convict" and "Old George" became acquaintances, if not friends. George had worked in the prison wood furniture shop for many years, and he was well suited for that work and had worked as a furniture maker before his conviction. George's skill in the woodshop earned him a supervisory role, which gave him direct power over other prisoners and influenced the contractors, who relied on his skill and ability to train new prisoners. George told "Convict" to approach the woodshop foreman and tell him that he heard from George that he needed a varnisher and that the old man recommended he speak with him. "You are a varnisher?" the foreman asked, with Old George standing at Convict's side. "I am a varnisher, sir..." Convict said, but he recounted that there was "no fooling that man." The foreman laughed and, under the heavy threat of his "mutilated stick," pointed to an empty varnishing station and prompted Convict to get to work. Admitting that he had never held a brush before in his

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<sup>294</sup> Ibid, 83.

life, "I splattered more varnish over myself [than on the wood...]" The foreman approached and, to Convict's surprise, did not use force or violence but simply said, "You're a little out of practice but if Old George says... you'll make a good varnisher when you get a-going", and he prompted one of Convict's fellow inmates, a young man named Duke to assist the imposter varnisher. This is a single example of prisoners using their influence and connections to exert power over the prison labor system.

Prisoner collusion against administrators and contractors became common in the 1870s. The financial recession of 1873 exacerbated the tensions by bolstering the convict population and cutting budgets for new infrastructure, food, and other amenities.<sup>295</sup> since Auburn and other prisons of the early nineteenth century were designed to have people isolated from one another except for congregate work hours, the cells were made to be very small, suitable for one person alone. The influx of immigrants in the second half of the nineteenth century placed an unprecedented number of people in prisons. It was not just immigration that flooded cell blocks but also the expansion of criminal activity punishable by incarceration. Also, the expansion of criminal acts punishable by imprisonment was expanded in this period. As a result, Auburn

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<sup>295</sup> York, *Annual Report of the Executive Committee of the Prison Association of New York*; "Prison Association of New York: Eleventh Annual Report"; New York (State), "Annual Report of the Inspectors of State Prisons."

cells, measuring just five by six feet, usually held two prisoners at once, sometimes three.<sup>296</sup>

Overcrowding particularly undermined prison administrative control methods. Prisons kept convicts separated while not under supervision, so they could not communicate and, therefore, could not conspire with one another. Grouping prisoners in tight quarters significantly undermined this strategy, and the sophistication of prisoner revolt in the era at the same time prisons broke their rules about total isolation is not a coincidence. This problem was identified by Deputy Warden Peck of the Connecticut State Prison at Wethersfield. He remarked that although prisoners were not supposed to talk to each other, they could communicate, and the overcrowding in cells did much to make the code of silence challenging to enforce.<sup>297</sup> The ability to communicate would become important as prisoners began to resist systematically. Prisoners were orchestrating riots with one another and conspiring with each other, and these events most likely began in these unsupervised cells with multiple occupants. There was even fear that prisoners could collude with some of the contractors. As such, communication was strictly between the instructors and the prisoners. Prisoners were not supposed to talk to each other; communication was strictly about teaching the work. Instructors were carefully vetted to ensure they did not

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<sup>296</sup> "Sanborn Fire Insurance Maps."

<sup>297</sup> "The Prison Commission."

have quote criminal tendencies such as profanity or being an alcoholic because there was fear that these contractors could somehow collude with prisoners.<sup>298</sup>

This collision formed into mutinies and rebellions, often of physical violence, as prisoners commonly took hostages for leverage. Often, their demands for less work and better food were bartered for the lives of contractors and prison foremen, whom prisoners both hated and had easy access to in the confines of penal factories where the contractors were vastly outnumbered. Other times, prisoners took guards and prison officials hostage but also dragged in innocent victims such as prison administrators' family members in the worst cases. Not all acts of prisoner resistance made newspaper headlines. Prisoners also resisted in ways we do not wholly understand or in ways we cannot always know since they left little information about their experience behind. Violence may have been the most effective prisoner tool for eliciting attention to their plight, but they worked collectively to undermine prison contractors by breaking machines, losing tools, sabotaging raw materials, or slowing the pace of their work through "stints." In many ways, prisoners operated within a lopsided power structure, but this did not mean they had no power themselves. Indeed, the perception of prisoner powerlessness on behalf of their captors and the belief

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<sup>298</sup> Ibid.

that prisoners could not overtake such an established labor system may have been the seeds of the contractors' undoing.

External pressures on the contract system were mounting, but also significant pressure from within, mainly due to the changing makeup of American prisoners. Between 1865 and 1880s, veterans, particularly in the northern states, made up more than half of the north's state and county prisons. Aside from the drastic increase in the prisoner population generally, veterans brought a sense of self-importance from the sacrifices that earned their veteran status.<sup>299</sup> These veterans fought to end forced labor in the southern states, which made it all the more difficult for this new group to assimilate into an existing contract labor system: a forced labor system in its own right. Evidence that this generation of American prisoners did not adhere to the existing system was evident from the dramatic increases in prison labor strikes, which threatened to upset the day-to-day operations of American prisons.

Many acts of prisoner resistance that we know of were not so hidden or elusive. Indeed, the most we know about prisoner activity in the 1870s and 1880s was due to a large number of widely publicized "prison mutinies," which became prisoners' only outlet to the general public, and the increasing scale and drama of these events into the 1880s suggest both the escalating violence in the

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<sup>299</sup> McLennan, *The Crisis of Imprisonment*.

American prison and prisoners' keen awareness of the growing stage on which they performed. From reports of these events, prisoners' demands were clearly delineated around several vital items. The work, often revolving around a new prison contract, was too hard, the food was poor, and their keepers' tactics were brutal.

At the same time, there is evidence that prison mutinies were sometimes orchestrated and sophisticated; they represented the most basic of demands. Prisoners did not demand recognition, the right to organize, or better pay, even though reformers on the outside were fighting for that very thing, nor did they demand better living conditions or other material goods. Indeed, their actions were driven by the basic human need for rest and nourishment, both of which had been denied adequately due to the contractors increased brutality and the cutting of prison funds for rations. A prisoner at the New Jersey State Prison summed it best when he said, "...unless we are given rest, and a larger supply of food of better quality is furnished, we shall lay down our tools and refuse to work."<sup>300</sup>

The most common acts of prisoner resistance that we know of were large-scale "prison mutinies" that generally followed on the heels of new or renewed prison contracts or acts of violence on behalf of contractors, which led

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<sup>300</sup> "Almost a Mutiny in the New-Jersey State Prison`," *New York Times* (New York, N.Y., United States, 1873).

to a boiling over. In July of 1877, shortly after Sing Sing Prison renewed a large labor contract with a stove manufacturer, a prisoner working in the casting shop was brutally beaten after refusing to work. Over three days, over 900 prisoners across the prison's industrial shops put down their tools and refused to work. Their demands were simple: decrease output expectations of the shop foreman, stop physical beatings, and improve the quality of their food.<sup>301</sup> This labor strike lasted for three days and spanned all of the industrial operations, illustrating the level at which prison guards could not control the communication between prisoners. Again, cells at Sing Sing in the 1870s held at least two prisoners, sometimes three. Prisoners were generally confined in their industrial shops for the day hours, and there was not much time for cross-shop communication. Even meals, though taken in a congregate setting, were done in silence and under the supervision of guards. Therefore, the best time for prisoners to communicate with one another and to combine forces in mutinous activities was in the unsupervised cells.

Even young male first-time offenders at the famed Elmira Reformatory for Boys also struck and refused to work in 1882, when they stopped making brush wear under the peace price system established by famed Zebulon

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<sup>301</sup> *New York Times*, July 26, 1879,1.

Brockway.<sup>302</sup> Indeed, the administrators at Elmira Reformatory for Boys saw this as part of the problem and began segregating their prisoners based on their daily activities. Again, this was an attempt to eliminate cross-contamination.

While they were "...so eager to rid themselves of their superiors... they have only brought upon themselves greater suffering than mere confinement and hard labor...."<sup>303</sup> Indeed, some prisons took it even further by expelling prisoners who instigated or played a significant role in prison strikes. A fascinating example is Western State Penitentiary, which saw many prisoners removed to the labor-intensive Allegany County Workhouse to keep them separated from the rest of the prison population. Not only were some prisoners transferred to the Allegheny Workhouse from Pennsylvania state prisons, but judges sentenced convicted strikers to the workhouse to an infrequent degree, making it a holder for radical laborers and communist sympathizers.

In 1877, in New York, over 900 prisoners stopped their work on a stove casting contract after one of their fellow prisoners had been brutally beaten. Shoe workers went on strike in Brooklyn in 1885, and Kings County prisoners struck, citing that the prison food was not satisfactory for a day's work. Other

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<sup>302</sup> Fred C. Allen, *Extracts from Penological Reports and Lectures Written by Members of the Management and Staff of the New York State Reformatory, Elmira, N. Y.* (New York: Summary Press, 1926).

<sup>303</sup> "Mutiny at Auburn: Attempted Murder of the Prison-Keepers Several Seriously Wounded.," *Advertiser*, November 1873.

large-scale strikes revolving around work occurred in the State Prison at Trenton, New Jersey, in 1890 and the Massachusetts State Prison at Concorde in 1882.<sup>304</sup>

Prison mutinies were not just a result of isolated violence or tensions rising to the surface. Sometimes, there was a direct connection between prisoner violence and new contractors coming into the prison. This was the case in 1874 during a mutiny at the Missouri State Prison, which received national attention. That same year, the state of Missouri had adopted the industrial contract lease system, and when prison factory managers started to speed up convict production, the prisoners took several guards hostage and claimed that the food was "insufficient for hard-working men."<sup>305</sup> Unable to satisfy and agitate the prisoners' demands further, prisoners in the Missouri State Prison contract shoe shop struck and threatened to burn the prison down.<sup>306</sup> A year later, a similar strike revolving around the inadequacy of the food erupted when 300 prison workers of that same shoe shop armed themselves and refused to work.<sup>307</sup> The leaders of that strike, reportedly including one African-American prisoner, were lashed 70 times and placed in solitary confinement. A decade later, in 1883, workers from the same shoe shop, still resisting the brutality of

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<sup>304</sup> "The Rebellious Convicts.: The Mutiny in the Concord Prison Still Unsubdued.," *New York Times*, 1882.

<sup>305</sup> *New York Times*, June 3, 1874,1.

<sup>306</sup> *New York Times*, June 20, 1874, 1.

<sup>307</sup> *St. Louis Republican*, January 24, 1875,9.

the system they worked, threatened and nearly succeeded in burning the entire facility.<sup>308</sup> Fire was a standard tool of resistance in these mutinies. For example, shortly after the Minnesota State Prison at Stillwater was awarded a contract with the Northwestern Manufacturing and Car Company, the prison was set on fire, burning the prison to the ground. Although it was never proven, many suspected that a group of prisoners had started the fire in protest of this new contract.<sup>309</sup> Full-scale riots were just the tip of the iceberg; hundreds of slow-downs, stints, and acts of sabotage occurred annually.

These activities extended wherever industrial prisons existed.<sup>310</sup> In 1897, a mutiny "unusually referred to in the *New York Times* as a "strike" broke out in San Quentin prison. Once suppressed, 40 prisoners were sentenced to solitary confinement to subsist on bread and water. Additionally, prisoners' allowance and tobacco and sugar were cut off for a year, saving the prison enough money to hire more guards.<sup>311</sup> In 1875, prisoners at the state prison in Lincoln, NE, led by the infamous gunfighter William McWaters, took guards and the prison warden's family hostage. They then seized the prison armory. Several hundred

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<sup>308</sup> "The Missouri Prison Mutiny: The Ringleader's Plan to Set the Building on Fire.," *New York Times*, 1883.

<sup>309</sup> Ted Genoways, *Hard Time: Voices from a State Prison, 1849-1914* (St. Paul: Minnesota Historical Society Press, 2002).

<sup>310</sup> Lichtenstein, *Twice the Work of Free Labor*; Curtin, *Black Prisoners and Their World*.

<sup>311</sup> "San Quentin Prison Mutiny."

citizens arm themselves under the order of the local sheriff.<sup>312</sup> The common denominators in these instances revolved around work and generally had something to do with a new prison labor contract. It seemed that as the prison profiteers took the worst of industrialization into the prison wall, prisoners reacted in much the same way as their free counterparts.

### ***Conclusion***

This chapter has shown how the prison contract system—controlled by private contractors and prison administrators, became increasingly inhumane during the last quarter of the nineteenth century, or at least appeared more so. The brutality of prison labor was thrust into the public eye mainly due to the prisoners' resistance. Their acts of defiance often led to extreme violence, capturing the attention of many Americans who might have otherwise remained oblivious to their situation. These uprisings, called prison mutinies, ushered in a new wave of penal reform. Contractors became the target of reformers, lawmakers, and American unions, who decried the practice of for-profit labor as unfair competition.

In response, state governments began prohibiting employing prison labor in the service of private firms. However, as we will explore in the next

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<sup>312</sup> "A Prison Mutiny: The Convicts in-the Nebraska Prison Overpower Their Guards. They Seize the Armory and Hold the Warden's Family as Hostages. Citizens About the Prison Attempt to Recover It. United States Troops on the Way to Lincoln," *Chicago Tribune*, January 12, 1875.

chapter, these laws did little to alleviate the suffering of prisoners. In fact, it can be argued that the absence of work brought on by these restrictive laws may have exacerbated prison conditions. This is because the laws gave prison administrators complete control over the lives of prisoners, extending their control to their day-to-day work activities.

## Chapter 4

### THE FALL OF CONTRACT LABOR AND THE RISE OF THE PRISON LABOR PROBLEM

"The contract system in a species of slavery."<sup>313</sup>

--*Austin Lathrop, 1898*

It was August 25, 1894, a hot summer day that would become a significant turning point in the history of prison labor policy in the United States. As reported by *The New York Times*, despite the sweltering heat in the partially finished Romanesque-style State Capital Building, a quorum was present at the morning session of the Constitutional Convention of New York State. The agenda for the day was the discussion and vote on a highly disputed proposal known as the McDonough Amendment, put forward by Representative John T. McDonough. The McDonough Amendment, if passed, would bring about a monumental change to the New York State Constitution. It sought to ban any form of prison labor that posed unfair competition to New York State businesses.

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<sup>313</sup> Austin Lathrop, "Superintendent of New York Prisons, Annual Report" (State of New York, 1898), 7.

This included the prohibition of contract labor that sold goods on the open market, also known as the "contract system." Such a ban would significantly affect the State's prisons, which had long relied on these contracts for financial stability and prisoner control.

The debate over the Amendment was intense and drawn out, extending throughout the day. According to the *New York Times*, McDonough himself faced severe criticism. The more conservative delegates believed that the proposal overstepped their authority and that the issue should be handled by the state legislature, not the constitutional convention.<sup>314</sup> In a passionate speech, McDonough declared that his Republican Party had pledged to abolish prison labor but had since failed to fulfill this promise. He argued that the workers affected by such labor, such as garment and hat makers, were voters, and it was the party's duty to protect its working constituents. Other delegates, like Mr. Francis, supported the Amendment, citing the plight of the 14,000 female collar workers in Troy, NY, who had lost hundreds of jobs to the penitentiary in Albany alone.

Not everyone saw prison labor as a significant threat, however. Mr. Pratt contended that the numbers did not add up, arguing that prison products

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<sup>314</sup> Charles Zebina Lincoln, *The Constitutional History of New York from the Beginning of the Colonial Period to the Year 1905: Showing the Origin, Development, and Judicial Construction of the Constitution* (Lawyers Co-operative Publishing Company, 1906).

represented less than 1% of the total and did not warrant the constitutional convention's interference. Mr. Marshall, another delegate, expressed concern that the Amendment would leave prisoners idle, a condition he feared. He pointed out that professional penologists had long maintained that work was crucial to the rehabilitative nature of prisons. Marshall was right. Everyone, supporters and detractors alike, knew that such a change would throw New York's prisons into chaos.

With the stakes high, the debate continued. Proposals ranged widely. Some suggested abolishing machinery in prison work, and others exaggerated claims that prison labor had decimated many of New York's major industries. In the end, however, the McDonough Amendment was adopted by the constitutional convention with a vote of 58 to 33, marking a significant shift in the policy of prison labor across America.<sup>315</sup>

To the dismay of contract-system supporters everywhere, New York's McDonough Amendment was only the first piece of legislation in a decades-long, anti-contract wave that nearly eliminated the practice across the United States. Prison administrators, reformers, and politicians grappled with the fallout of the ban, attempting to find solutions to new waves of new prisoner unemployment, an issue they called the "prison labor problem." The prison labor problem

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<sup>315</sup> "No Prison Contract Labor: The Amendment Adopted by the Constitutional Convention," *New York Times*, August 26, 1894.

revolved around three central economic and administrative issues. First, prison managers were concerned that state funding would not replace the loss of profits from the contract system. Superintendent Austin Lathrop expressed concern in his annual report for 1894 when he asked, "How are managers expected to continue prison labor...when it [the State] hampers its agents so that he cannot compete with free manufacture?"<sup>316</sup> Second, prisoner unemployment posed serious threats of instability. Because work was central to the regimentation and discipline of prisoners, "idleness" was the most significant concern. "Idleness is the curse of the jails..." was a popular sentiment reiterated over decades. "Idle hands are the devil's tools...." Without something for prisoners to do or keep them occupied, inmates would become "violent, rebel, and...subject to all the evils recounted...."<sup>317</sup> Third, penal labor was justified as a dominant mode of prisoner rehabilitation and was viewed as an integral component of convicts' physical and mental stability. Lathrop expressed this, too, when he said that the State was obligated to provide work for the imprisoned. To deny that right, he said, was "barbaric and inhumane" and went against "divine law."<sup>318</sup>

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<sup>316</sup> Lathrop, *Superintendent of New York Prisons, Annual Report*, 211.

<sup>317</sup> "How to Employ Convicts: Means Adopted in Sing Sing, and What Some of the Prisoners May Do. New Law's Hard Problem. the Men Must Not Compete with Free Labor, but They Must Be Kept from Idleness or Mischief Will ensue, Say the Wardens.," *New York Times*, 1897.

<sup>318</sup> Lathrop, *Superintendent of New York Prisons, Annual Report*, 197-199.

Politically and socially, the heart of the prison labor problem was not if prisoners should work; the practice was (and is) protected by the 13<sup>th</sup> Amendment. Instead, the dispute revolved around who should benefit from penal labor. Politicians believed the State should benefit from prison labor. Progressive reform groups demanded that profits should go to inmates' families.<sup>319</sup> Members of the Reformatory Movement believed work was needed to fulfill a rehabilitative ideal, instilling discipline and preparing ex-cons for post-prison life.<sup>320</sup> Labor unions could not care less what prisoners did if their activities did not compete with free labor.<sup>321</sup> Prison administrators were varied in their ideas on what work should look like, although they most closely aligned with members of the Reformatory Movement. However, their unique position on the ground—dealing with the everyday problems of running a prison—led to a more immediate and practical question: how to get idle prisoners back to work without the traditional means under which they labored.

At first glance, the McDonough Amendment I looked like it might spell the end for prison labor generally in New York State and across the country. By the end of 1896, it was reported that New York prison industries were on the

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<sup>319</sup> This idea was represented by the National Committee on Prison Labor, which was a New York progressive group with a large female membership.

<sup>320</sup> Francis A Allen, *The Decline of the Rehabilitative Ideal: Penal Policy and Social Purpose* (New Haven: Yale University Press, 1981).

<sup>321</sup> Gildemeister.; Labor unions were the strongest and most influential opponents of prison labor, especially in the garment industries.

verge of closing altogether. Lack of funding and limited work made operating prison factories fiscally unfeasible. Over the next few years, however, the absence of private contracts turned into an opportunity for prison administrators to create a new system of labor that gave them greater control over prisoner activities and industrial profits. A new "state-use contract" system put prisoners to work making goods for state consumption, first in New York and then across the country. As the state-use system took form between 1895 and 1910, penal labor not only survived in the United States, but it encompassed more prisoners than ever and served as the basis for prisoner rehabilitation, discipline, and education throughout the twentieth century. This chapter argues that the pursuit of prisoner control, not profit, became the impetus for the inception of the state-use prison labor system.

The chapter explores the events and circumstances that resulted in the abolition of the contract system in New York State and the varied circumstances that led to the prohibition of the system elsewhere. The chapter primarily focuses on prison administrators' responses to their newfound environment. Initially, prison administrators seized almost every chance to get inmates back into work, but over time, they conceived a nuanced and refined labor system. This system continues to permeate our prison system today, proving this era's lasting impact. As the state-use system developed, administrators realized that the old contract system's advantages were not exponential. The old system

provided tools to keep prisoners occupied, tired, and distracted but offered less direct control over prisoners. The real winners were private contractors. In many cases, prisons netted losses from these arrangements because of the expenses of maintaining the manufacturing facilities.<sup>322</sup> Although total revenue may have decreased with the state-use system, individual prisons still profited because there were no capitalist pockets to fill.

Additionally, contracts stipulated that prisoners were "leased" to private parties, and administrators played little direct role in monitoring the work process, a task left to private company supervisors (Chapter 3).<sup>323</sup> With private firms brushed aside, prison administrators could construct a new labor system that revolved around emerging ideals of flexible rehabilitation and industrial citizenship. No one premeditated the transition from contract to state contract. Although the new system was more financially profitable for the prisons, it was not born from a desire to make money. Instead, due to new political and economic constraints and opportunities, the new state-use system was born out of a desire and perceived need to control, regiment, and rehabilitate prisoners.

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<sup>322</sup> The responsibility of maintaining manufacturing facilities was the responsibility of the prisons, and this, along with the menial or nonexistent wages given to prisoners, was a major argument why the contract system was an unfair source of competition.

<sup>323</sup> An interesting example is the case of Auburn Prison. State records indicate that Gustav Stickley of the well-known Stickley Furniture Company, leased and supervised over 100 prisoners in the 1880s to produce chairs.

### ***Prison Reform Finds a Labor Ally***

During the 1870s, prisoner strikes and contractor abuses significantly bolstered the moral superiority of the Reformatory Movement's message. These incidents of unrest among prisoners and allegations of misconduct by contractors caught the attention of organized labor, which was arguably the most politically influential opponent of the contract system. Labor organizations interpreted these prisoner strikes as an indication that the contract system was not a legitimate form of labor but rather something closer to slavery. In addition, they argued that the "low-plane competition" resulting from prison labor was detrimental to the average hard-working individuals.<sup>324</sup> Trade unions had been criticizing the practices of contract prison labor since at least the 1840s, viewing it as a source of unfair competition for guild workers.<sup>325</sup> However, their initial attempts to eradicate the system were primarily localized and failed to gain significant momentum at the state or national level. Yet, by the 1870s, contract labor had escalated into a national issue. In 1878, the Knights of Labor, a prominent labor organization of the time, made penal labor an essential item on their national agenda. In their "Declaration of Principles" rolled out that year, they included a call to advocate for the United States Congress to "prohibit this

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<sup>324</sup> E.T. Hiller, "Labor Unionism and Convict Labor," *Journal of Criminal Law and Criminology* (1931-1951) 5, no. 6 (1915).

<sup>325</sup> Gildemeister.

hiring out of convict labor."<sup>326</sup> However, since prison labor was primarily controlled at the state and county levels, it was the state labor organizations, chapters, and local branches that took up the cause.

Perhaps the most compelling critique by labor unions was that prison labor was a state-subsidized business. As contractors became more successful as prison populations grew during the last two decades of the nineteenth century, people realized that the states were bearing the brunt of the cost, especially as facilities needed to be expanded. The contractors paid a small sum to the prison for the use of labor and were required to furnish all materials and machinery for the production process, but that was it. The facility itself, the factory, gas, later electricity, water, food, boarding, and healthcare were all on the dime of the State, the prison, and the taxpayers. Indeed, the issue of costs promoted an official investigation in New York State in 1883 that concluded that prison labor in New York (and by extension, across the nation) unfairly competed with free labor and that the nature of this unfair competition was free to minimal cost labor in addition to the prison's subsidization of facility costs.

Unlike the Reformatory Movement, which focused exclusively on developing its own reformatory labor system rather than restructuring the existing system, the Knights of Labor offered simple programmatic

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<sup>326</sup> Knights of Labor, *The Journal of United Labor*, 1880.; The Noble and Holy Order of the Knights of Labor, Declaration of Principles, 1878

recommendations for political leaders to consider. The Knights of Labor generally advocated for prison labor regulation over abolition. The proposed recommendations for prison labor fell into several broad categories. These included limiting the number of prisoners that could be employed making goods, the percentage of goods made that could be marketed in the private market, and limiting the hours prisoners could work. The proposed regulation also included preventing the interstate shipment of prison-made goods, including importing raw or finished materials, which would support states that wanted to ban or limit prison contracts. They also advocated for giving prisoners more working rights in terms of healthful employment, humane treatment, and even compensation for their dependence and, above all, giving them a new chance by giving them essential skills they would need to work on the outside and on this point, they aligned with reformers' goals. Perhaps the most significant proposal was establishing a state-use system, which would allow prisoners only to produce goods for state institutions. The Knights of Labor were clear that whatever system was to be adopted, they did not condone the elimination of prison labor.<sup>327</sup> Like most of the public, labor unions saw penal labor as an essential reform and punishment component of imprisonment. They would rather see prisoners developing work ethic while making socks for a state

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<sup>327</sup> Knights of Labor General Assembly, *Proceedings of the General Assembly of the Knights of Labor of America* (General Assembly, 1889).

hospital than being trapped in a demoralizing and brutalizing contract labor system.<sup>328</sup> After all, these prisoners would be released to enter the workforce.

***The Yates Bill, the McDonough Amendment, and the Fall of the Contract System***

Since as early as 1888, organized labor's recommendations resonated within the legislative chambers of New York, the first State in the nation to take up prison labor regulation as a serious issue. Legislators acknowledged the negative impact of prison labor on free workers while recognizing that prison labor was an integral component of the prison system. Accordingly, their mission was to develop alternative programs to preserve labor at the center of the prison experience while placating the "...contradictory desires..." of labor unions, reformers, and administrators.<sup>329</sup> The task was to eliminate prison labor's unfair competitive edge to free labor while maintaining labor as a central reform component of imprisonment.

Calvin Huson, a young New York Legislator, was the first to take on the challenge politically. In 1888, he laid out his brash new plan to his peers at the New York General Assembly to end his State's, indeed America's, "prison labor problem."<sup>330</sup> Perhaps his home's proximity to the famed Elmira Reformatory or

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<sup>328</sup> E.L. Cornell, "Joint Commission on State Prisons" (November 1879).

<sup>329</sup> Hiller, "Labor Unionism and Convict Labor."

<sup>330</sup> Assembly, *Proceedings of the General Assembly of the Knights of Labor of America*.

his uncle and namesake's untimely death in a Confederate prison sparked an interest in penal labor; we cannot be sure. Nevertheless, whatever the motivation, Huson was among the first American politicians to bring penal labor to the national stage. He did so with a controversial proposal known as the Yate's Bill, which, with one swift blow, solved two of prison labor's most pressing problems and placated prison labor's most prominent stakeholders.

On the surface, Huson's proposal aligned nicely with the recommendations of the Knights of Labor. He proposed that prison goods only be marketed for state use, restricting production to clothing and other textile-related supplies used in public institutions, including the prison itself. Huson foresaw a problem with his plan, however. Narrowing the market of prison-made goods would ultimately lower the demand for prison labor. Any measures that reduced output had the potential to increase "idleness"; this was not something politicians or prison administrators were interested in. The more controversial component of Huson's proposal came in the form of reverse Taylorism.<sup>331</sup> Since the state-use system would significantly reduce the needed output from prison labor, he proposed expanding labor time by eliminating the machines and tools of efficiency. Huson believed that more labor-intensive and handwork-oriented work would serve administrative needs of control and

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<sup>331</sup> This is my term.

placate reformers who saw the contract system as exploitative and unions who saw the system as unfair competition.<sup>332</sup> While the idea of handwork to slow down work did not mesh with the Reformatory Movement's idea that work should be training-oriented, expanding work under the Yates Bill would have been attractive to them in other ways. For example, the Bill allowed more local institutions (such as jails) to participate in state-use production. Generally, these institutions were too small to warrant any investment required to start a prison shop, but with no machines came no overhead. This system would expand the reach of prison labor.

While it was received as hastily designed, Huson's solution was quite sophisticated. Huson realized that the success of the contract system lay in the ability of prison profiteers to bring advancing labor systems and machinery from the outside world into the prison setting. Essentially, his solution proposed to reverse everything he knew about industrial efficiency. Second, Huson realized that the power of prison labor was not in its ability to make money but to control. Indeed, the same contract system had become rather unwieldy in the way that it became more mainstream industrial—like large free factories experienced more labor problems, so did larger prison factories. Huson knew that regressing the type of work done by prisoners would benefit the control

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<sup>332</sup> *Journal of the Assembly of the State of New York.*, 1890.

mechanism of labor. Huson proposed legislation that would remove efficiency tools from the prison labor process. Machines would be replaced with hand tools and mechanical power with literal manpower. Production of prison-made goods would decrease significantly, but the time and energy taken to produce those goods would increase exponentially.<sup>333</sup>

Although Huson's state-use system would become the dominant mode of prison labor in the United States within the next two decades, it was initially received negatively. Limiting the production of clothing for public institutions was seen as too narrow. David B. Hill, then Governor of New York, believed the proposed market was too small to sustain prisoner employment in his State. In response to the Yates Bill, he wrote, "But what the people, the taxpayer, and the workingmen all wanted was, not a measure affording mere temporary relief, but a carefully prepared and comprehensive bill, settling the vexed question of convict labor and providing a permanent system therefor which should compel the prisoner to work at hard labor all the year round....and at the same time not render the prisoners a burden to the taxpayers."<sup>334</sup>

Where the Yates Bill hit the wall was among prison administrators. While the Yates Bill was specific to New York State, it was being proposed as a model

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<sup>333</sup> Lewis Cass Aldrich, *History of Yates County, N. Y.* (D. Mason & Company, 1892).

<sup>334</sup> David B. Hill, *Public Papers of David B. Hill: Governor* (Albany: Argus, 1888), 190.

that could be adopted nationally. Because it had the potential to set a national precedent, and it engendered criticism from around the nation. Huson had some support, such as from Edward S. Wright of Western State Penitentiary in Pennsylvania, who wrote, "Limiting steam-powered prison factories and selecting markets that were less competitive would be advantageous for the prison labor problem."<sup>335</sup> However, Wright's was a minority opinion. William Round, Secretary of the New York Prison Association, wrote to Frederic Hill (1803-1896), the English prison inspector, that the "Infamous Yates Bill...has thrown out whole prison system into chaos...."<sup>336</sup> Administrators and reformers feared that less work would plunge the system into chaos, as Round said. Charles Fenton of the Chicago House of Corrections said the Yates Bill was "impractical" and that he estimated only about 5% of convicts could be employed in Illinois under such a narrow state-use system.<sup>337</sup>

W.D. Paterson wrote that limiting the market for prison-made goods was not a good idea. In Ohio, he said that the State institutions would absorb the prison-made goods in "what? Three months?" then what"? "Enforced idleness,

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<sup>335</sup> "Prison Labor: Discussed by the Hon. Carroll D. Wright, " *The Hartford Courant*, September 27, 1899).

<sup>336</sup> Frederic Hill, *Frederic Hill: An Autobiography of Fifty Years in Times of Reform* (R. Bentley, 1894), 321–323.

<sup>337</sup> Hill, *Public Papers of David B. Hill*.

wreck and ruin," he answered facetiously.<sup>338</sup> M.J. Cassidy, the longtime Superintendent of Eastern State Penitentiary, wrote, "You ask what such a law would result in Pennsylvania? Why the same as in your State [New York]—Fail!"<sup>339</sup> Nelson Vicell, Warden at the Rhode Island State Prison, remarked that if his state "should...perpetrate such injustice upon inmates...I would resign as Warden." There already was not enough work for his prisoners, and a new, "enforced idleness soon degenerate so that when discharged they would be mentally and physically in worse condition than when committed."<sup>340</sup> William S. Green, General Superintendent of prison in Massachusetts remarked that the Bill was "thoroughly impractical."<sup>341</sup>

Prison administrators did not think the narrow state-use system proposed by Huson would do anything to alleviate their labor concerns. Indeed, it would cause more damage. Interestingly, none of these criticisms specifically mention the loss of contract profit as the concern on which those criticisms were based. Indeed, the whole ordeal revealed that administrative concerns revolved around curbing idleness (ensuring everyone had enough to do) and aligning their work programs as closely as possible to the reformer's goals of training-oriented

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<sup>338</sup> Alfred Emanuel Smith and Francis Walton, "The Outlook," *The Christian Union* 39, no. 11 (1889), 190.

<sup>339</sup> *Ibid*, 193.

<sup>340</sup> *Ibid*, 188.

<sup>341</sup> *Ibid*, 199-200.

labor. General Roeliff Brinkerhoff, from the Board of Prison Management of Ohio, reported to *Christian Union* readers that the key to the prison labor problem was to make "...labor both productive and instructive."<sup>342</sup> He continued, "...not through contact labor to make money, but disciplinary and educative labor to make money." Brinkerhoff wrote, "...every penologist of experience could have foretold [that the methods proposed by the Yates Bill] are utterly destructive of all proper prison methods." "Without productive and instructive prison labor, no progress can be made in prison reform, and it follows, as the night the day, the Yates Bill must retrograde to the horrors of the Middle Ages."<sup>343</sup>

It would take twelve years for Huson's state-use system to be forced on prison administrators as their only option. In 1894, the New York Assembly passed the long-awaited McDonough Amendment. Arguing that penal labor exploited prisoners and endangered free workers, amendment supporters upended the essential source of employment by barring the leasing of inmates to privately run prison factories that sold goods on the open market.<sup>344</sup>

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<sup>342</sup> Ibid.

<sup>343</sup> Ibid, 327.

<sup>344</sup> The right for American prison administrators to force prisoners to work was (and is) guaranteed under the 13th Amendment of the U.S. Constitution; Section 1 reads, "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." However, their right to lease prisoners to private parties suggests that the imprisoned resigned

### ***A Fledgling State-Use System***

For most peddlers, shoppers, school children, and commuters milling about the frigid streets of Albany, November 12, 1894, was an average day. Not so for the gray-bearded Colonel Omar Van Leuven Sage, whose fire-warmed statehouse office overlooked the city streets that suffered from the Panic of 1893. Sage could not relate to the people below him; he was a man who wanted for little. Born to an affluent family, private schooling, a prestigious military career, board positions on banks and schools, seats in public office, and a position at the head of his family's Catskill Coal Company defined his life. At

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ownership of their labor upon conviction. This also has legal basis. After passage of the 13th Amendment in 1865, former slave states enacted a series of discriminatory criminal laws known as the “Black Codes.” These codes, which sent many to prison for minor misdemeanants, ensured the subordination and African Americans and a steady supply of labor to private enterprises in the south, including railroad and mining companies. There were many detractors of this southern practice. Congressman John Adam Kasson argued that the involuntary servitude clause in the 13th Amendment should only apply to labor under the direct control of state officers. Indeed, the Civil Rights Act of 1866 was passed to help alleviate these problems but to no avail. However, the practice of leasing to the highest bidder was affirmed in by the Virginia Supreme Court in 1870. In the decision, *Ruffin v. Commonwealth* the court found that prisoners, by virtue of their incarceration, were “civilly dead” and a “slave of the state.”; *Ruffin v. Commonwealth*, (1871).; A.C Armstrong, “Slavery Revisited in Penal Plantation Labor,” *Seattle University Law Review* / 35, no. 3 (2012): 869–910.; David M. Oshinsky, *Worse than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (New York: Free Press, 1996).; Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010).; Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Cambridge: Harvard University Press, 2010).

sixty, Sage was a well-respected New York figure, by all accounts, a highly astute and "thorough businessman."<sup>345</sup> He had no experience, however, in the emerging fields of criminology or penology. However, favor-based appointments were a reality in New York politics, rendering Sage's inexperience irrelevant. In 1890, Austin Lathrop, Superintendent of New York State Prisons, fellow business magnate, and army man, appointed Sage as his Chief Clerk.<sup>346</sup> The position was a sinecure, allowing Sage to supplement his income with little effort. The easy money ended in 1894 when Sage suddenly found himself Warden of New York's most notorious prison and an unwitting participant in a penological experiment in reshaping prison labor that would shape American prisons for decades.

On the afternoon of the 12th, a courier arrived at Sage's office with disturbing news. Charles Durston, the Warden of Sing Sing Prison, was dead.<sup>347</sup> Durston's fatal heart attack could not have come at a worse time; his prison was in its own State of cardiac arrest. For years, overcrowding, underfunding, disease, prisoner unemployment, and riots plagued the river-side institution. The prison was widely considered the worst New York had to offer.<sup>348</sup> In particular,

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<sup>345</sup> "O.V. Sage Warden of Sing Sing: Superintendent Lathrop Promotes His Clerk, Who Has Had Charge Since Durston's Death.," *New York Times*, 1894.

<sup>346</sup> "O.V. Sage Appointed to Office.," *New York Times*, 1894.

<sup>347</sup> "O.V. Sage Warden of Sing Sing: Superintendent Lathrop Promotes His Clerk, Who Has Had Charge Since Durston's Death.," *New York Times*, 1894.

<sup>348</sup> In the 1890s, Sing Sing was considered by most accounts to be the worst prison in New York in terms of physical condition and disease rate.

the concern over prisoner idleness and rioting, as seen in Chapter 3, prompted Durston's appointment a year earlier after a storied, if not notorious, career at the labor-oriented Auburn Prison.<sup>349</sup> However, hopes of transferring Durston's penal-labor achievements were stymied by his sudden departure. Sing Sing was left in flux.

Although many reformists, union leaders, and politicians supported the state-use system, prison administrators built it from the ground up. They improvised and experimented within the ebb and flow of politics, economics, public perception, daily challenges, and prisoner agency. At the forefront was Colonel Sage, who found himself on the ground floor of this new experiment after the passing of Charles Durston. On November 19, 1894, Superintendent of Prisons Austin Lathrop appointed Sage the 29<sup>th</sup> Warden at Sing Sing.<sup>350</sup> It is unlikely that Sage was ready, let alone qualified, to take on this position in such a tumultuous time. Just a year earlier, when Charles Durston took the Warden's office, he held no doubt that the centrally essential and stable contracting system would continue in New York, and he planned to streamline that system

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<sup>349</sup> Durston was well known for his achievements at Auburn regarding streamlining the prison's relationships with private firms to develop organized and efficient penal factories. Durston also received notoriety toward the end of his life, as it was discovered that Durston had sold off pieces of property owned by Sing Sing to a private party.

<sup>350</sup> Sage had served as interim Warden after Charles Durston's Death in May 1894.

to transform Sing Sing into a more productive and efficient industrial prison.<sup>351</sup>

Sage disagreed with Durston's assessment of the work's value. He remarked in an interview that upon taking office, he believed penal work and prisoner unemployment were not central issues in American prisons. Yet, within weeks of his new post, he admitted, "I [now] find that [it does] make a great difference." Idle convicts "...become restless and quarrelsome, with a tendency to insubordination...." "Fights between [them] are...frequent, and the turbulent ones are more disposed to resent correction on the part of their keepers."

Five miles north of the tranquil solitudes of Sleepy Hollow, Sage sat in his new office perched atop the fortress-like prison. His privileged view as Warden of Sing Sing allowed him to gaze over the seventy-year-old structure, a vast and decrepit expanse of an institution considered "absolutely unfit for human habitation."<sup>352</sup> His newfound faith in the efficacy of penal labor and the daunting task of getting prisoners back to work must have weighed upon him. Why was he chosen? Despite his novice status in penology, Sage's background is what made him a viable candidate. Sage was a transitional figure, filling Sing Sing's needs on two levels. First, he served in the Army, and his experiences were invaluable to

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<sup>351</sup> "Warden Durston at Sing Sing.: Will Look About Before Saying What He Proposes to Do.," *New York Times*, 1893); "Death Is Drawing Nearer: Kemmler May Be Executed in Thirty-Six Hours," *New York Times*, 1890).

<sup>352</sup> New York State Legislature, *Documents of the Senate of the State of New York*, (New York, 1901).

the old guard of prison administration who prized regimentation and discipline.<sup>353</sup> Second, Sage's business background was advantageous, having headed his family's coal mining firm. At first, it seems contrary to logic that the State Prison Board would choose a businessman after they sent private businesses down the road. However, a desire to run the government like a corporation was an upward trend in this period, which might be the simplest explanation.<sup>354</sup> However, the more complex answer is that Sage and other administrators like him now had to assume a dual role of prison and business manager; indeed, they needed to create state-run prison industries.<sup>355</sup> In this area, Sage's skills were transferable.

From his window, Sage could also see new arrivals as they were unloaded like cattle from barred rail cars after the forty-mile journey from New York City, where many of Sing Sing's inmates hailed.<sup>356</sup> One of those men was John Howard. Although Sage did not know it, Howard would become a poster child for Sing Sing and Sage's ambitions. A New York City judge sentenced this twenty-six-year-old, Canadian-born man to nine years in state prison in 1894 after being

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<sup>353</sup> Nearly every New York prison manager in this period, superintendents and wardens had some military experience, and they continued to use their military titles while working in the prison system.

<sup>354</sup> Wiebe, *The Search for Order, 1877-1920*.

<sup>355</sup> Austin Lathrop said that New York Prison Wardens needed to assume the role of business manager in his end of the year report from 1895.

<sup>356</sup> In 1895, approximately 1/3 of Sing Sing's prisoners were from New York City.

found guilty of sodomy. Nightmarish conditions awaited Howard and his fellow inmates. The State Prison inspector criticized Sing Sing, expressing that many felonies in New York are not capital crimes. "Yet a man [sent] to Sing Sing...may be sentenced to early death as surely as if he were doomed to the electric chair. If he escapes tuberculosis, he owes it to the strength of his constitution; if he has any predisposition to the disease, it will surely develop."<sup>357</sup> In 1895, New York Prisons had an average death rate of 1.4%, while Sing Sing boasted a death rate of nearly 5%.<sup>358</sup>

The spread of disease in Sing Sing was only made worse by a newly implemented hard-labor regime, a stopgap to keep prisoners busy and out of trouble while the administration figured out a long-term labor plan for industrial employment. Prison inspection reports show a significant spike in tuberculosis, other illnesses, and even cases of suicide in the three years after 1895. When questioned about the suicides and rate of disease, Sage defended his new institution by arguing that idleness, rather than brutal manual labor, was the culprit.<sup>359</sup>

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<sup>357</sup> Prison Association of New York, *Annual Report of the Prison Association of New York for the Year 1900* (New York: State Printers, 1901), 102; *Documents of the Senate of the State of New York*.

<sup>358</sup> Austin Lathrop, *Superintendent of New York Prisons, Annual Report* (State of New York, 1895).

<sup>359</sup> "Labor for prisoners, A Measure to Provide County Convicts with Work According to the New Constitution," *New York Times*, 1896.

If the judge had sentenced John Howard just a year before, he would have worked in the prisons' wood carving, chair caning, marble cutting, or pearl button shops. Alternatively, he might have worked in the brass foundry, making saddle implements or enameling decorative trinkets or signs. These may have been preferable. With those shops closed after the McDonough Amendment, Howard and 665 of Sing Sing's prisoners spent their days breaking rock, digging ditches, and moving stone. With most prison industrial shops closed, New York's prison board reacted quickly to prisoner idleness." In a statement issued by the board, they recommended that "[prison managers] in the state shall, as far as practical, cause all prisoners...who are physically capable thereof, to be employed at hard labor."<sup>360</sup> To fulfill this mandate, Sage embarked on an ambitious cleanup and expansion project, opening up the quarry used by Auburn prisoners in 1823 to build the original Sing Sing.<sup>361</sup> Sing Sing was a fortress and certainly did not need more walls. The institution was slated for demolition multiple times in the 1890s, although lack of appropriation never allowed that. Even Durston said he would not waste any money remodeling the old prison. "It's...worn out and out of date. The cells [are] only holes and not what they should be."<sup>362</sup>

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<sup>360</sup> State of New York, 170-a, *Superintendent of Prison Industries*, 1894.

<sup>361</sup> Several sources, including the State Board of Prison documents, show that Sing Sing was slated for demolition several times between 1895 and 1907.

<sup>362</sup> "Warden Durston at Sing Sing." *New York Times*, 1893.

The New York Assembly also implemented its strategy to curb prisoner unemployment. The General Assembly accomplished this by passing a new statute in 1895 that allowed New York judges to sentence criminals serving under five years to county jails at their discretion rather than state prisons. Sing Sing's case led to a population decline of about 14% between 1895 and 1899, a rate which significantly reduced the work needed to occupy all the inmates.<sup>363</sup> However, even with the new statute, half of Sing Sing's prisoners remained unemployed in 1895, and the temporary Cool-Hand-Luke style of hard labor was not sustainable. First, there was the issue of safety and prisoner containment. Mining and quarrying activities in prisons have a long history, going back to the Old New-Gate Prison (Chapter 1). However, prisoners working outside the prison walls was always a severe security issue, and this limited the maximum number of prisoners that could be employed in the Sing Sing quarries to about one-half of the total population.<sup>364</sup> Other than security concerns, there was only so much renovation that could be done without funding.

Additionally, hard manual labor was considered by many to be a form of corporal punishment, a practice that was outlawed in New York (at least on

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<sup>363</sup> State of New York, *Superintendent of Prison Industries*; Lathrop, *Superintendent of New York Prisons, Annual Report*; New York (State) Prison Department, *Annual Report of the Superintendent of State Prisons* (New York: Jerome R. Parmenter, State Printer, 1896).

<sup>364</sup> 665 Prisoners employed in quarry and expansion project out of 1,395 in total in 1895.

paper) in 1891.<sup>365</sup> even Superintendent Lathrop, a hardened supporter of penal labor, criticized Sage's tactic, calling it "brutal inhumanity." He likened the task of carrying blocks and stone across the prison yard, and then back again... to the eighteenth-century treadwheel.<sup>366</sup> Although Lathrop spoke out against Sage's program of hard labor on several occasions in the 1890s, his criticism was always followed by an appeal to the New York Assembly to appropriate monies to reopen industrial operations. In short, Lathrop blamed the program of hard labor on the State's decision to ban the contract system, and he appealed to humanitarian sentiments to push the New York prison manager's agenda of establishing state-use industrial operations.

The practice of hard manual labor did not align with the expectations of new professional penologists and reformists who believed that work should have a rehabilitative function, giving convicts both skill and purpose.<sup>367</sup> While most of these professionals came from universities, many of their ideas became reflected in the policies of non-professionally trained prison managers such as Lathrop, Sage, and the late Durston. "Such labor must be useful and productive...." Lathrop wrote.<sup>368</sup> Durston expressed this rehabilitative importance of work best.

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<sup>365</sup> "Silence and the Dark Cell: Modern Methods of Correction in the Great Penal Institutions of the State." *New York Times*, 1904).

<sup>366</sup> Lathrop, *Superintendent of New York Prisons, Annual Report, 1896*.

<sup>367</sup> Allen, *The Decline of the Rehabilitative Ideal*.

<sup>368</sup> Lathrop, *Superintendent of New York Prisons, Annual Report, 1896*.

He said, "[The goal was] to interest the men and make them begin at the beginning and work their way up by degrees to high places. Thus, the men had ambition to achieve success, and many prisoners who had entered the prison knowing no trade by which they could have honorably and honestly earned a living on the outside...."<sup>369</sup>In 1897, Sage also expressed this sentiment, proclaiming, "It is absolutely necessary that some occupation be found for men in confinement." "There is nothing so efficacious as work for keeping up the spirits of convicts and for preserving discipline."<sup>370</sup>

Sage echoed a reformist ideal about work as something more than punishment, but the program of hard labor he instituted at Sing Sing after the McDonough amendment suggests that the practice of work took priority over the ideology of work, at least at first. Breaking rocks had minuscule rehabilitative benefits for inmates; it simply gave them something to do. This busy-work method aligns with what historian David Rothman called the "custodial function" of prisons. Rothman argued that the religious ideal of penitence as a mode of reform from the early nineteenth century had made way for a policy of housing and subduing dangerous urban criminals by the late nineteenth century.<sup>371</sup> Reform was no longer critical to the function of prisons in this era, and this plays

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<sup>369</sup> "Warden Durston at Sing Sing."

<sup>370</sup> "How to Employ Convicts."

<sup>371</sup> Rothman, *Conscience and Convenience*.

out in work programs as well. Again, custodial functions did not meet the expectations of reformists or penologists on any level. However, ironically, the custodial function in prison work took hold in the years after the progressive McDonough Amendment was passed. This unintended consequence would need a remedy.

### ***Flexibility in Theory***

Criticisms of hard manual labor and pressure to make work rehabilitative prompted Sage to look for alternative work arrangements. In his experiments, Sage implemented a highly progressive idea of flexibility, which came mainly from the propagating theory of environmentalism in criminology. Sage's actions were not necessarily following penologists' recommendations, but instead, they were born out of what he saw as a necessity to stave off critics and jumpstart state-use work programs.

In progressive criminology, environmentalism was the belief that criminals were made, not born. The latter was a belief of American prison reformers of the early nineteenth century, a theory most progressives renounced.<sup>372</sup> For turn-of-the-century penologists, the answer to criminality lay in the individual's background and experiences, especially those from urban

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<sup>372</sup> Ibid.

immigrant ghettos.<sup>373</sup> This developing theory warranted discretionary treatment responses. Each convict was evaluated individually, and a plan of reform was developed for each case, at least in theory. This concept of environmentalism is most reflected in changes in criminal trials in the last quarter of the nineteenth century. In a criminal trial, a defendant's background information became admissible as evidence to determine sentencing. Once a prisoner arrived at their destination, that paper trail followed them and was expanded. Prisoner admission forms from Sing Sing in the early twentieth century, for example, only have one line describing the crime of conviction. The rest of the form is dedicated to behavioral and background considerations, outlining things like class, rearing environment, information about parents, and, of course, occupation and skill.<sup>374</sup>

Discretionary treatment revolved around the concept of flexibility. This idea dates to the American Prison Association's Declaration of Principles in 1870.<sup>375</sup> In the 1870 Declaration, we also see the first mentions of several

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<sup>373</sup> Another major approach to criminology was psychological. This was a new belief that people became criminals because of a maladjustment in the brain. This theory, while popular in the early twentieth century, never overshadowed environmentalism and played a much less significant role in the policies of prison administrators. A much smaller group of penologists also continued the belief that people were born criminals. This became a part of the Eugenics movement.

<sup>374</sup> "Registers of Male Inmates Discharged."

<sup>375</sup> E.C. Wines, *Transactions of the National Congress on Penitentiary and Reformatory Discipline, Held at Cincinnati, Ohio, October 12-18, 1870.*

important progressive innovations, including parole, probation, and indeterminate sentencing.<sup>376</sup> These new tools were meant to reduce recidivism and lessen average sentences by allowing inmates to control the conditions and length of their incarceration through their behavior. Elmira Reformatory, led by Zebulon Brockway, was the most famous and successful institution to follow this progressive doctrine.<sup>377</sup> Elmira utilized a "grading system," unlike behavioral color charts used in modern elementary schools. Good behavior leads to reward, and unwanted behavior leads to punishment. Elmira's success, however, had much to do with its unique prison population. Elmira inmates were exclusively male, first-time offenders of non-violent crimes.

Flexibility and environmentalism became pivotal in the realm of penal labor. Aspects like reward systems, indeterminate sentencing, and parole eligibility were increasingly hinged on inmates' behavior, particularly their ability to work productively. In an environment devoid of typical work incentives, reward systems emerged as an essential tool for prison administrators to control their populations. It can be posited that more than any other prison activity, penal labor came to epitomize the concept of flexibility in the late nineteenth century. However, in large state prisons, inmate activities were not diverse — quarrying rocks, eating, sleeping, yard time, and other routine activities adhered

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<sup>376</sup> Ibid.

<sup>377</sup> Pisciotta, *Benevolent Repression*.

to a stringent regimen. Each inmate was expected to carry out these actions uniformly; any deviation invited punishment. Within such a rigid structure, one may wonder how Warden Sage at Sing Sing incorporated flexible rehabilitation into the daily routine.

### ***Flexibility at Work***

Sage found his answer in the inmate John Howard. One day in 1895, Howard rested on his cot, dirt clinging to his callused hands. Suddenly, the sound of alarm bells clattering filled the air as smoke bellowed through the prison's corridors. One of the few operating industrial shops in Sing Sing, the textile department, was on fire. We do not know the cause of the fire—whether it was accidental or started by a prisoner—and we do not know the extent of the damage. We do know that one of the casualties was an expensive and complex piece of equipment called a picking machine. As another method to keep prisoners working, inmates produced their own clothes, blankets, and socks in the textile shop. Therefore, the administration needed to replace or repair the damaged equipment immediately to avoid purchasing materials from an outside firm.<sup>378</sup>

A few months earlier, a prison guard confiscated some drawings from Howard's cell. Pencils and paper were among the illicit contraband in Sing Sing's

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<sup>378</sup> “Convict Builds Two Organs.: Howard, Who Is Serving a Long Term in Sing Sing, Now Hopes for Pardon,” *New York Times*, 1898).

cells at the time. There were a few reasons for this. Prisoner communication was highly restricted to specific times and places, and guards did not want prisoners passing notes between cells.<sup>379</sup> Perhaps the drawings' peculiar nature prompted the guard not to dispose of them but to bring them before the Warden. Sage recognized the drawings as schematics for a pipe organ. At some point in 1895, Howard's file was updated in the Sing Sing records after the drawings were found. Upon his arrival, his occupation was recorded as "cook." Upon his arrest, the immigrant from Guelph, Canada, had been working in some eating establishment. However, in a different script, a second occupation was recorded as "mechanic."<sup>380</sup> It is common for prisoners to record occupation during incarceration, but Howard's record illustrates that Sing Sing's administrators actively tracked individual prisoners' skills.

Howard's record came in handy after the textile shop incident. Guards pulled him aside to bring him before Sage. Sage asked Howard if he could repair the damaged picking machine, and Howard, perhaps out of obligation or fear, said he could. Fortunately for Howard, he delivered on his promise and repaired the machine. Sage continued to call upon Howard's aptitude for mechanics over the proceeding years. It is uncertain whether Howard felt he had a choice in

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<sup>379</sup> Lewis Edward Lawes, *Twenty Thousand Years in Sing Sing* (New York: R. Long & R.R. Smith, 1933).

<sup>380</sup> "Registers of Male Inmates Discharged."

these activities, but they were undoubtedly preferable to laboring in the quarry. Howard went on to rig a photomicrograph for the prison hospital, and he spent countless hours making a scale miniature of the prison, complete with a minutely unimposing electric chair, which made it all the way to the Paris Exposition.<sup>381</sup> Howard's past is a mystery, but there is evidence that he was somewhat educated. Dealings with the prison doctor, Dr. Irwin, Howard seemed to grasp the operation of his photomicrograph. Howard wrote a description of this apparatus: "The consumption germ, bacillus tuberculosis, which is so small that 1,000,000 germs put together might be passed through the eye of a needle, is this shown as a rod of the thickness of a match, while the bacillus anthracis of blood poisoning seems to be as thick as a pencil. Bacilli of typhoid fever look like spiders with many legs, and spirilla of relapsing fever looks like so many snakes. A common flea put on a microscope stage would, with this magnification, appear to be about three times as large as an elephant."<sup>382</sup>

Howard's most significant task came when Sage offered him a chance to build two reed organs, one for the prison's Protestant chapel and another for the Catholic Chapel. At this point, Howard seemed to embrace his role as a prisoner

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<sup>381</sup> "Convict Builds Two Organs.: Howard, Who Is Serving a Long Term in Sing Sing, Now Hopes for Pardon."

<sup>382</sup> An extract taken from a description written by Howard of his photomicrograph. The description was given to New York Time's reporter in 1899.

of all trades. In a newspaper interview, Howard credited himself as an organ maker's apprentice, and he lauded his accomplishment of installing the great organ at the Winter Palace in St. Petersburg, Russia.<sup>383</sup> It is unclear if this was true. The only evidence of Howard having any connection to musical instruments was in 1891, when British census records show him living with the family of John R. Stevenson, a London piano dealer, where he worked as a piano tuner and repairman.<sup>384</sup> Suggesting some uncertainty about his capability, Sage sent the organ plans to the New York firm he was initially going to hire for review before he started construction. The plans came back with approval, Sage ordered the materials, gave Howard a workshop and helpers, and in time, the two organs were complete; administrators claimed one to be the largest of its kind in the world. Howard's organs were remarkably complex, consisting of approximately 24,000 pieces each. The cost to commission these organs would have been about \$4,500, but Howard completed his at \$460.<sup>385</sup>

The highly visible reed-organ project allowed Sage to use Howard as a poster child for Sing Sing's growing focus on labor rehabilitation. Reporters from the *New York Times* were invited to Sing Sing to interview Sage, Howard, and several other prisoners in 1899 after the organs were complete. Of Howard, the

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<sup>383</sup> "A Day with the Convicts at Sing Sing."

<sup>384</sup> "Census Returns of England and Wales, 1891. Kew, Surrey, England:," 1891, Public Record Office, The National Archives of the UK.

<sup>385</sup> "A Day with the Convicts at Sing Sing."

reporter wrote, "The employment caused a visible change in the man's demeanor. Naturally frank and free of viciousness, the moment he found he was to be trusted with the responsibility of an important piece of work, the chronic sullenness of prison life left him. He is now working zealously; his artisan's pride is aroused..."<sup>386</sup>

Howard used the spotlight to his advantage. We know that Howard believed his conviction and imprisonment were unjust. Sage, to reward Howard's work, entertained his sentiment. Sage said he hoped Howard's "...wonderful work will attract attention to his case and bring about an investigation that will set him at liberty." Sage permitted Howard to send letters requesting a pardon to a Bishop, Cardinal, and the Governor of New York, Frank Swett Black.<sup>387</sup> Sage praised Howard's achievements as a testament to the power of rehabilitative work in the era in which private for-profit prison contracts were eliminated in New York. In quite the reversal, Howard cited the money that he saved the State as grounds for his pardon.

Howard's circumstance is an interesting story but not an anomaly. Several years after the McDonough Amendment, other prisoners were called upon to complete various projects with their unique skills or interests. Another

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<sup>386</sup> "Convict Builds Two Organs.: Howard, Who Is Serving a Long Term in Sing Sing, Now Hopes for Pardon."

<sup>387</sup> Ibid.

example was Lucien Waver, a thirty-six-year-old Belgium-born bookkeeper who was sent to Sing Sing in 1897 after being convicted in Brooklyn for forgery.<sup>388</sup> More than Howard, Waver represented the shift from giving prisoners something to do to creating state-use industries. Waver built a machine of his design to produce wire mattresses. Sage jumped at this opportunity to create Sing Sing's first state-use prison shops. With a group of inmates, Waver produced 1,500 mattresses in 1899, enough for each of Sing Sing's prisoners. The actual turn to the state-use industry came when Sing Sing's cells were full of Waver's mattresses.<sup>389</sup> Sage continued the shop's operation to produce beds for sale to other New York institutions, including Dannemora. Waver was also reported to be a skilled artist, and he claimed to be the nephew of H. Lingos, a Flemish painter under whom Waver had worked as an apprentice. Waver apparently offered his artistic abilities to Sage, who rewarded his mattress work by allowing him to paint the stations of the cross for the Catholic chapel along with other religious scenes and iconography. At the same time, Howard was building his organ in a dedicated space. Waver was producing mattresses and was even given his own studio space for his painting.

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<sup>388</sup> "Inmate Admission Registers," 1971 1865, Department of Correctional Services, New York State Archive; "Registers of Male Inmates Discharged."

<sup>389</sup> "A Day with the Convicts at Sing Sing"; "How to employ Convicts."

Even convicts with no discernable skill could be given work based on their interest. A few years after Howard's organ, a Polish immigrant and convict known as "Joe" was put in charge of Sing Sing's cows. Joe had been convicted of murder in the 1880s, and he was serving a life sentence. As Joe aged, he was unable to perform manual labor tasks, but having been a farmer in Poland, Sage's successor, Addison Johnson, charged Joe with the care of Sing Sing's three cows.

### ***365 Years of Prison Labor***

In the years immediately following the passage of the McDonough Amendment, Sing Sing's administrators used demanding labor programs as well as individual convict assignments, such as crafting organs, medical apparatuses, production machinery, and artwork, as a stopgap until a long-term, sustainable labor program was developed. These individual assignments for convicts such as Howard, Waver, and "Joe" were effective tools to deflect attention away from the barbarity of hard labor like mining and rock breaking. Although Sing Sing's administration successfully put a large percentage of the prison population back to work, half of the prisoners still did not work at all.<sup>390</sup> Assigning work based on prisoner skill or interest was not uncommon, but it certainly was not the norm and was likely reserved for the administrators' favorites. Sage and other New

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<sup>390</sup> Austin Lathrop, *Superintendent of New York Prisons, Annual Report* (State of New York, 1894).

York Administrators needed work programs that targeted more significant swaths of the prison population.

Two years into Sage's experiment in penal reform, plans to demolish Sing Sing and Auburn prisons were still on the table, but the economic depression, led by the Panic of 1893, made that a slow and eventually unsuccessful endeavor. Despite the potential of demolition, Sage began to shift his prisoners' activities in 1896 and 1897 from quarrying to full-scale construction and rehabilitation projects. These projects became more extensive and more involved over the years, even warranting appropriation from the New York Assembly.<sup>391</sup> The large amount of work done by prisoners in this period and the state investment in the old Sing Sing is likely why demolition never took place.

The restoration and expansion of this prison gave large numbers of prisoners something to do, and it opened several of the dilapidated industrial shops and provided employment for hundreds of prisoners not working in the quarries. The first shops to reopen were the metal and wood shops, which provided over 200 additional jobs. Sage mainly focused the work in these shops on constructing a brand-new administration building, which employed 106 prisoners working on the interior in 1897.<sup>392</sup> Another 100 prison workers were responsible for cutting all the stones. Sing Sing's administrators were proud that

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<sup>391</sup> Sing Sing Prison, Annual Warden Report, O.V. Sage, *New York Times*, 1898.

<sup>392</sup> "How to Employ Convicts."

not only did prisoners quarry the stone for the new building but that the fit and finish, woodworking, plumbing, and tilework were done by them as well. The new building included decorative woodwork, plaster, and marble-chip floors. The acts of producing such an ornate building reportedly changed the prisoners from men with no skill to expert artisans.

In 1896, Superintendent of New York Prisons Austin Lathrop established a new state-wide industrial department that was charged with developing sustainable state-use industries; there were only so many mattresses that could be produced and so many edifices constructed. To head the Department, Lathrop hired reformist and penologist Frederick Hamlin Mills, who had formerly been the head of the industrial Department at Auburn Prison.

Mills was heavily influenced by Zebulon Brockway, "the father of prison reform," having served as Brockway's Chief Clerk at Elmira prison in the 1880s. There is a telling story of Mills in 1881 as a young man traveling to Chicago. There, he entered the First National Bank, Chicago's *Sun* newspaper detailed. He asked to speak with the manager, Lyman Gage. Mills reportedly told him, "I want to get a position in your banks for a friend of mine, Mr. Gage." "He is a man of experience and ability and had the best of references from the Bank of North American in Montreal, where he was employed for several years." "Where is he now?" Mr. Gage asked. "He is in the Elmira Reformatory," Mills explained that the convict had just finished his sentence and was waiting to get a job so that he

could officially leave. Gage laughed at the seriousness of Mills' request and continued, "Did you come out here with the impression that the Chicago banks select their clerks from the Reformatories?" Gage asked. Unperturbed, Mills explained the context of his "friends'" incarceration.<sup>393</sup> This man had left Canada for New York to better his fortune, but he yielded to the evil temptations of the metropolis. However, Elmira's work and education programs had righted the man's misguided ways. Persistence paid off. The newspaper wrote that the Elmira graduate did receive a job in the bank and even rose to the head bookkeeper.<sup>394</sup>

With his belief in the transformative power of training and education, Mills took the position as head of the New York State Prison's Industrial Department, where his job was to inspect, report, and make recommendations relating to the various prisons and their work operations. Mills operated like an industrial engineer, figuring out how each prison's industrial Department should order materials and solicit customers. More still needed to be done. The department employees were assigned to work with the State's prison managers to identify and study the potential state-use markets for prison-made goods. Sage worked closely with "Solicitor Mills."

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<sup>393</sup> National Prison Association of the United States Congress, *Proceedings of the Annual Congress of the National Prison Association of the United States* (New York: Knight & Leonard, 1898), 37.

<sup>394</sup> George W Blake, *Report on Sing Sing Prison* (Albany, 1913).

In January of 1897, Sage and Mills opened the first of what he called Sing Sing's "State Shops." In this Department, convicts were employed producing Waver's mattresses, clothing, shoes, and other sundries used within Sing Sing—in other words, for prisoners' consumption. In early 1897, only 65 prisoners were employed in the state shop, a far cry from an industrial prison, but this quickly changed.<sup>395</sup> Sage expanded the State Shop making clothing that same year, offering another 75 jobs for convicts to produce goods for other state institutions. Another 75 were engaged in making shoes for other state institutions. A brush-making department was established for selling to other institutions. Sage stated, "In compliance with the law, I shall endeavor to keep the convicts here as busy as possible."<sup>396</sup>

Between 1897 and 1899, Sage and Mill's work enormously impacted Sing Sing. By 1899, Sing Sing had opened furniture, textile, shoe, mattress, paper, tobacco, and metal operations that sold goods to various state institutions, including hospitals, other prisons, state offices, etc. The breadth of products produced by Sing Sing inmates in the few short years after the McDonough Amendment was truly impressive. A product catalog from 1898 illustrates that over fifty varieties of shoes were available. In the late 1890s, many prisoners were tasked with maintenance work (about 300 to 400 at any given time). Many

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<sup>395</sup> Lathrop, *Superintendent of New York Prisons, Annual Report*.

<sup>396</sup> "How to Employ Convicts."

prisoners were tasked with keeping the prison's boilers going—steam fitting and coal shoveling.

In a report from Sage's office, Sing Sing's administration touted to the State Board of Prisons that prisoners had engaged in 133,346 days' worth or approximately 365 years of labor in the last five years. The way the report presented the numbers was more substantial than they actually were. Based on an average prison population of about 1,500, this is only about 2 to 3 hrs. "It is a strange fact that the convict hates Sundays and holidays, for after the attendance in the chapel, there is no work."<sup>397</sup> In 1899, the work routine began at Sing Sing at 6:30 a.m. when the convicts awoke. They worked until 11:30 when they filed into Hope Hall for lunch. Prisoners worked six days a week and 8 hours a day. Compared to earlier examples such as Wethersfield, the relatively light work schedule makes this work program seemed fair and progressive, but it was a strategy to spread work around.<sup>398</sup>

Prison labor was necessary for administrators, who believed that keeping prisoners busy would solve many of the prisoners' ailments. However, conflicting accounts tell us a different story, one that might suggest prison administrators spent as much time convincing the public that prisoners worked as they did

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<sup>397</sup> Wisconsin Board of Prison Labor Commissioners, *Report of the Board of Prison Labor Commissioners* (Democrat Printing Company, 1899).

<sup>398</sup> "Prison Labor."

create jobs. A former Sing Sing prisoner in the 1890s, self-referred to as Number 1500, published a short expose on his time incarcerated. He wrote, "...no prisoner in...New York...has hard work to do. Probably there is no man to-day, except a clerk here and there, or a messenger who has many errands to perform, who does half a day's work or is ever pressed to do that if he feels like doing less." "One of the troubles that beset the administration is the fear of running out of work and, as a consequence, no job is hurried nor is any man overtasked."<sup>399</sup>

### ***Getting Prisoners to Work***

The challenge of developing state-use industries in New York's prisons revolved around finding legal markets for prison-made goods and obtaining appropriation for needed production equipment and materials. However, the most important aspect of prison labor is the prisoners themselves. How does one get prisoners to work? What encouragement, what reason do prisoners have to submit to the authority of their overseers and labor for them? Lawmakers and administrators were not blind to this issue. Getting prisoners to work has been a problem since the dawn of prison labor, but there were many more constraints at the turn of the twentieth century.

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<sup>399</sup> Number 1500, *Life in Sing Sing* (Indianapolis: Self Published, 1904), 34.

Punishment was, of course, the tried-and-true motivator. In 1897, Warden Sage expressed the importance of this punishment system. "I have been forced...to maintain discipline...I cannot afford to be lenient." "I shall be obliged to hold every convict strictly up to the rules and punish each offense promptly."<sup>400</sup> However, progressive sentiments and humanitarian laws limited the ability of administrators to encourage prisoners to work through barbarity and force, at least to an extent. Waterboarding, sleep deprivation, lashing, and beating were not tolerated the way they were a few decades earlier.<sup>401</sup> These were not the only motivators used. Under the contract system in New York and other northern states, prisoners were sometimes compensated for their work by the contractor. This compensation was based on an hourly rate averaging about 1/10th of what a "free" worker would earn in a related industry, but it was better than nothing.<sup>402</sup> Or was it? In prisons, contractors compensated inmates—and this was the case in New York State—the administration often charged prisoners for basic goods they needed. This included shoes, blankets, socks, and prison uniforms. So even though prisoners were "compensated," they often had nothing to show for it.

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<sup>400</sup> "How to Employ Convicts"

<sup>401</sup> Rothman, *The Discovery of the Asylum; Social Order and Disorder in the New Republic*.

<sup>402</sup> Whitin National Committee on Prisons (U.S.) E. Stagg, *Penal Servitude* (New York: National committee on prison labor, 1912).

As we have seen, the authors of the McDonough Amendment surely understood that their new legislation would negatively impact the ability of prison wardens to employ the majority of healthy inmates effectively. They allowed hard manual labor, for instance, which had not been common practice since the mid-nineteenth century, to resume, and they devised their convict compensation plan. In the McDonough Amendment, section 108 authorized wardens and prison managers to compensate convicts using funds from state-use industries for work performed. Unlike the older payment system, this new compensation plan was on "the pecuniary value of work," not an hourly rate, ensuring that administrators did not pay prisoners if they were not making money.<sup>403</sup>

This compensation was not to exceed 10% of the total profits made. If the prison shops grossed \$10,000 in total production of goods, then the administration could divide up to \$1,000 among working convicts. This meant that prisoners who were not given work did not make any money. Furthermore, section 108 built in a punitive system which outlined that if "any convict so employed shall misbehave or break the rules of the prison, he may be fined 50 cents."<sup>404</sup> The average daily wage for prisoners in the late 1890s was between 2

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<sup>403</sup> New York State General Assembly, McDonough Amendment, § 108.

<sup>404</sup> *Ibid.*

and 5 cents per day for working convicts, so a fine of 50 cents could have been lost for 10 to 25 days of work.

Money was only good if prisoners could spend it on items that would make their incarceration more enjoyable. As a motivator, one of Sing Sing's industrial activities was a tobacco factory for the manufacture of both smoking and chewing tobacco. The most interesting aspect about this factory is that the tobacco was not sold. Instead, it was used as rationing and payment for good behavior. Motivation for hard work was also done by elevating productive prisoners into jobs that had greater responsibility but were ultimately more desirable, such as clerical and office work.<sup>405</sup> Warden Sage also created a distinct "class" of prison workers at Sing Sing known as "runners." Like the convicts given special assignments, the runners were the administration's favorites. They were a group of around 50 convicts selected from the prisoners with the best behavior records. Their primary source of work was to serve as messengers and clerical workers, domestic workers for the Warden's house, and bookkeepers. They wore different clothing to distinguish them, likely because they were given more freedom to move about the prison complex.

Within the working prison of the late nineteenth century, a distinct hierarchy of prison workers was developed based on skill and race. Work that

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<sup>405</sup> "Labor for Prisoners."

utilized a prisoner's skill was indeed a privilege at Sing Sing and was mainly left for skilled white prisoners. Looking at census records of Sing Sing prisoners in 1900, men like Waver are listed as having 0 months unemployed. Chas H. Tillman, an African American butler from New York City, was listed as being unemployed for 56 months, the entirety of his sentence to that point. If they did work, African Americans were primarily subjected to cooking and maintenance tasks such as in the kitchen (40 workers) or Bakery (30 workers).<sup>406</sup> Incidentally, prisoners who worked in maintenance work were not compensated under the McDonough Amendment.

Women, too, had work. The Matron of the State Prison for Women, also known as Albion, reported in 1896 that near-constant employment for inmates had been achieved. "Discipline in this prison was most perfect last year of any period since the prison was established...[and]... "labor proved to be...very potent...in attaining and preserving this excellent discipline."<sup>407</sup> However, women's work revolved solely around handicrafts, and they were not compensated for their employment.

While New York State was the first to eliminate the contract system, Connecticut, Illinois, Indiana, Maine, Maryland, Massachusetts, Minnesota, New

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<sup>406</sup> "Inmate Admission Registers."

<sup>407</sup> New York (State) Prison Department, *Annual Report of the Superintendent of State Prisons* (New York: Jerome R. Parmenter, State printer, 1897), 15.

York, Ohio, and Pennsylvania all passed laws over the next 15 years that similarly meant to curb the contract system. While the laws differed, they all included a combination of the following: sought to limit or prohibit productive facilities in certain industries; limit the number of prisoners that could work in particular industries; prohibit particular prison industries that damaged local industry; restricting road and outdoor work; prison-made goods needed to be consumed by state agencies; prison-made goods barred from being imported from other states; prison-made goods required to be labeled or branded. By 1927, the contract system was virtually eliminated from all northern states.

## Chapter 5

### AMERICA THROWS THEM OUT OF JAIL

"I could see no good reason why the prisoner should be fed and housed at the expense of the public while his family becomes a public charge."<sup>408</sup>

--Henry Huber

At sunup, the stead on Berlin Street in the fourth ward of Barre resembled the hundreds of other quaint farms dotting the region, with cultivated fields, cows, goats, barns, sheds, and farmworkers tending the land and animals.<sup>409</sup> Travelers on the backcountry roads around the sleepy Vermont capital of Montpelier would have passed countless similar dairy farms of little distinction. Beginning in 1907, sundown cast a different picture entirely. At day's end, the farmhands who toil on this particular farm did not head back to the big

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<sup>408</sup> "Henry Huber," in *Proceedings of the Fifty-First Congress of the American Prison Association, Jacksonville, Florida* (New York: Russell Sage Foundation, 1921), 143.

<sup>409</sup> H.A. Manning, *Manning's Barre and Montpelier Directory* (New York: Manning and Co., 1905).

house, nor did they travel down the dusked road to rejoin their families. Instead, they gathered alongside the dirt road and awaited the local Sheriff.<sup>410</sup> Once he arrived, they mounted the bed of their custodian's wagon, or perhaps early-model pickup, and settled themselves in for the rough ride back to town, where they were inmates at the Washington County Jail.<sup>411</sup>

A local court condemned these men for petty crimes, and the judge sentenced them to serve in the county jail.<sup>412</sup> Despite that judgment, these convicted did not spend much time behind bars. They slept in jail and ate dinner there, but these prisoners spent six long days of the week tilling, milking, shearing, and plowing the local Tracy Farm. This unusual northern penal farm became possible the year before, in 1906, when the Vermont State Legislature passed the Prison Labor Law. This statute established the first carceral program

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<sup>410</sup> Vermont State Legislature, Prison Labor Law, 1906; Section 1 stipulated that prisoners (opportunity pending) would work ten hours a day, six days a week, except Sundays and major religious holidays.

<sup>411</sup> "Out-of-Prison Work for Prisoners," *The New York Times*, September 16, 1911; "Examination Complete, Commission About Ended with House of Correction," *The Barre Daily Times*, May 4, 1906; In later years, prisoners may have been boarded at the Tracy Farm. 1910 census records indicate that there were five grown men—all of Canadian birth—that were living with the Tracy family but were unrelated to the head of household.

<sup>412</sup> In 1907, Vermont's misdemeanor offenders were sentenced to the Vermont county jails in the county in which they were prosecuted by the County Court.

in the United States whereby local and county jail keepers could release their inmates to work under the supervision of private individuals or firms.<sup>413</sup>

Under this new law, Vermont's male prisoners—serving sentences ranging from one day to one year for "being intoxicated, for a breach of peace, or for being a tramp," along with other misdemeanor offenses—could (or, in some cases be forced to) accept employment within the local community.<sup>414</sup>

According to the legislation, it was the responsibility of a Prison Board consisting of an assistant judge of the County Court, the County Sheriff (who also served as the de facto jail warden), and the County Supervisor of Highways to seek and secure employment for prisoners.<sup>415</sup> In Vermont's largest county, however, the responsibility seems to have fallen squarely upon the shoulders of the Sheriff. Washington County's Sheriff Frank Herbert Tracy failed to perform the task of

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<sup>413</sup> By 1907, there was a long tradition of prisoners working outside the prison walls. The most notorious example is the southern chain gang system. Unlike the chain gang system however, prison workers under the Vermont Program did not need to be under the direct supervision of a prison administrator or guard. In addition, there was a system from the nineteenth century whereby prisoners were indentured to private individuals. The most notable example is the New York House of Refuge in the 1820s and 1830s. In these cases, the prisoner became the responsibility of the sponsor on a full-time basis. In the Vermont Program, the private employer was only to be responsible for the prisoner during the day.

<sup>414</sup> Vermont State Legislature, Prison Labor Law, 1906, Section 8; The exclusion of women from the law reflects a concern among early-twentieth-century prison reformers regarding the loss of male breadwinners to incarceration and the affect imprisonment had on dependents. More information regarding the concerns over family life and familial economic stability is discussed below.

<sup>415</sup> Ibid.

securing employment for his prisoners, or at least as the lawmakers intended. Instead, every morning, Tracey loaded up five to eight of his "boys" with their lunch buckets and brought them to his farm, where they milked cows and shoveled stalls for the very man who arrested them in the first place.

### ***Frank Tracy and the Expansion of Local and Country Jails***

Frank Tracy and the Washington County Sheriff's Department spent the first two decades of the twentieth century fostering their simple farm experiment into a fully-fledged penal work program that secured daily employment for thirty to seventy prisoners sent to work wherever and whenever there was space and opportunity. County jail prisoners cleared new roads, traveled door to door selling goods, carried bags for hotel customers, worked as clerks behind the counters of local stores, labored in textile factories, and, of course, worked on the Tracy farm.<sup>416</sup>

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<sup>416</sup> National Conference of Social Work, *Proceeding of the National Conference of Social Work at the Forty-Fifth Annual Session Held in Kansas City, Missouri, May 15-22, 1918* (Chicago: Rogers and Hall Co., 1919), 250-266; Monetary incentives for prisoners were not stipulated in the Vermont Prison Labor law. But without such incentive, Tracy found it difficult to motivate prisoners, even on his own farm. Reportedly, when Tracy asked one prisoner why he did so little work asked one prisoner, he replied "I'm doing as little work as I can not to be punished, and I'm going to keep on. You would do the same. Tracy reportedly replied, "If I could have seventy-five cents for yourself from your work each day, what would you do?" "Try me," the prisoner replied. This is the real contribution of this early program. Prisoners would be motivated by monetary award. This makes sense since it is more difficult to control prison workers outside of a factory setting.

Tracy became somewhat of a celebrity: a well-known booster of prison labor reform. He often left the responsibility of his county to others as he traveled around the country speaking to church groups and at prison conferences. He even authored several papers and informational guides, which instructed county jails nationwide on how to put cons to work.<sup>417</sup> Although Tracy fancied himself the progenitor of this peculiar system, we cannot grant him full credit. First, similar-looking systems such as convict lease and chain gangs existed in the south for a century; however, these lacked the critical connection to progressive ideas of indeterminate sentencing and flexibility, which will be explored further throughout this chapter. There was even an ideological precedent for these programs in Europe.

However, we should not discount Vermont and Tracy's role in popularizing the idea in the United States. The Vermont Prison Labor Law, aided by Tracy's boosterism, spurred a series of similar programs nationwide. Reformers and lawmakers in the states of Connecticut (1909), Delaware (1910), Ohio (1910), Massachusetts (1912), Wisconsin (1913), and West Virginia (1917) adopted nearly identical programs for their county and local jail systems. As the twentieth century marched on, work release spread to nearly every county and state and even infiltrated the rapidly developing federal prison system in the

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<sup>417</sup> Frank Herbert Tracy, *How the Vermont Plan Reforms Jail Prisoners* (New York: Russell Sage Foundation, 1922).

mid-twentieth century.<sup>418</sup> While they were called many things at the start—day pole, work furlough, work probation—all these programs collectively formed the basis for work release. At its core, work release was (and is) a penal labor system that sent prisoners out into the community to find jobs during the day while they remained incarcerated at night.<sup>419</sup> Like the state-use system (explored in Chapter 4), work release helped maintain labor as a foundational system in American jails and prisons while those systems were in the national prison crisis known as the "prison labor problem." These systems, which we will collectively refer to as "work release," were a significant change within the landscape of American prisons between the 1900s and the 1920s.

Although most of the public discussion about prison labor focused on more significant state and, eventually, federal prisons, work release affected the most significant percentage of American prisoners who resided in local and county jails in the first half of the twentieth century.<sup>420</sup> County and local jails never instituted large-scale prisoner work projects simply because they were smaller and did not have the resources of state institutions. In addition, county jails lacked the same stable work populations as the state or federal prisons.

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<sup>418</sup> By 1965, forty-eight state prison systems, the federal penitentiaries, and an incalculable number of county and local jails established programs.

<sup>419</sup> The term "work release" was not used widely until the 1950s. Before then, programs which released prisoners during the day were alternately referred to as day-parole, out-of-jail-work, or furlough.

<sup>420</sup> "United States Census Data," 1920 1860.

Most jails housed non-violent offenders serving sentences of no more than one year and sometimes as short as one day. Because the local and county jail populations fluctuated, and prisoners had brief stays, it was "difficult to teach prisoners any productive work or to employ them to advantage."<sup>421</sup> Flexible employment by day, without extensive contracts or labor systems, was the key to ameliorating the problems of the county jail. "The prisoner completes his sentence in good physical condition with hardened hands and muscles, ready for a new job."<sup>422</sup> In short, work release programs became an effective tool for bringing work to county jail prisoners.<sup>423</sup>

The public and politicians saw work in local and county prisons as more necessary as the population of those jails increased. As the population rose, sending off prisoners during the day became extremely attractive, and having the added income from work release relationships with private individuals and companies became desirable. Twentieth-century immigration and the

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<sup>421</sup> Hornell Hart, "Employment for Jail Prisoners in Wisconsin," in *Proceedings of the Fifty-First Congress of the American Prison Association, Jacksonville, Florida* (New York: Russell Sage Foundation, 1921), 9.

<sup>422</sup> Ibid.

<sup>423</sup> Department of Justice, *Prison Commitments in the United States* (U. S. Govt. Print. Off., 1923), 452.; Local and county jails were important component of the carceral system during this period. For example, in first six months of 1923 there were 166,356 (committed, not total population) individuals sentenced to prison of one sort or another. Only 1.2 percent of those committed went to federal prison. 7.4 percent went to state prisons. 58.1 percent of those convicted in 1923 went to municipal or county jails.

progressive concepts of indeterminate sentencing and flexible punishment were the primary causes of county jail population increases. A significant goal for progressive prison reformers was to empower prisoners to control their sentencing. Indeterminate sentencing, as they called it, allowed a prisoner to determine the length of their sentence through good behavior and work. To this end, parole became one of the most popular progressive-era programs. For the most extreme anti-prison progressives, probation was the best solution to limit or eliminate prison time. Many (especially the proponents of labor's rehabilitative power) felt this was ineffective. The sociologist Hornell Hart, for example, argued that parole and especially probation were ineffective. First, Hart suggested that many judges were weary of probation because sending people to jail had been THE tool of punishment in the past, and it was hard for people to conceptualize punishment without incarceration. Work release—incarceration at night and work outside the prison's walls during the day—would be an essential compromise between the tradition of incarceration and new progressive programs.

The progressive concepts advocated less punishment and more flexible programs focused on individual needs. As we will see, these ideas trickled into local and county jails from the state prisons on an ideological level. However, there were tangible effects of these ideas that connected state prisons and work release. For example, because progressives were about limiting prisoners'

sentences, there were fewer felony convictions in the progressive era, and shorter sentences were handed out. Simply put, fewer felonies led to more misdemeanor offenses and more people in local and county jails.

Many of the new laws that limited sentencing created a new category of prisoner: what could be called a serious misdemeanor. County jail prisoners were generally convicted of minor crimes: public intoxication, debt, vagrancy, etc. Because progressive criminologists advocated for the severity of the crime and the criminal's background to be considered for sentencing, more severe crimes were often knocked down to misdemeanors. Crimes such as battery and burglary, which generally landed an individual in state prison, now put them in the county jail. In some states, such as North Carolina, any crime that was sentenced to five years or less put someone in the county jail, and thus, those convicts were eligible for work release when that program was established there in the 1920s.<sup>424</sup> This increased the county jail population (as mentioned above) and made people think harder about the rehabilitative benefits of the county jail. Who cared if the public drunkard benefited from his 30 days in the county lockup? However, that attitude shifted as people spent longer sentences in county jails.

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<sup>424</sup> Ann D Witte and James Bachman, *Work Release in North Carolina: An Evaluation of Its Post-Release Effects* (Chapel Hill: Institute for Research in Social Science, University of North Carolina, 1975).

This issue, which the sociologist Stanley E. Grupp eventually called the "misdemeanant problem," was not a uniquely American phenomenon.<sup>425</sup> European countries also dealt with the increased population of major prisons and the overspill of many convicts to regional and county jails. For example, the Rev. Dr. Frederick H. Wines, Secretary of the Illinois Board of State Commissioners of Public Charities, attended a meeting of the International Prison Congress in Stockholm in 1878. The Congress' "Annual Report" describes this issue in England, France, and Sweden. In those countries, prisoners were sent to rural communities to work on state-funded prison farms. Perhaps most interesting is that European counterparts were also struggling with their own series of prison labor reforms, which Wines reported was also based on the fear of prisoner idleness.<sup>426</sup> Wines is a crucial figure because his name appears in discussions of work release into the 1920s. Though a discussion of Wisconsin will come later, Wines was credited by the sociologist Hornell Hart for inventing the concept of work release after the State of Indiana adopted a program that

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<sup>425</sup> Stanley E. Grupp, "Work Release Statutory Patterns, Implementation and Problems," *The Prison Journal* 44, no. 1 (April 1, 1964): 4–25; Stanley E. Grupp, "Work Release in the United States," *The Journal of Criminal Law, Criminology, and Police Science* 54, no. 3 (1963): 267–272.

<sup>426</sup> Frederick Howard Wines, *Report on the International Prison Congress Held at Stockholm, Sweden, August 20-26, 1878* (Weber, Magie & Company, State Printers, 1879).

allowed all misdemeanants who were not eligible for parole to work on state-sponsored but privately managed farms.<sup>427</sup>

While it is unclear if Wines or Hart influenced Frank Tracy of the Washington County Sheriff's Office, he would undoubtedly have been talking to prison professionals who visited his jail. In the early twentieth century, there were a series of national jail "inspections," though the earliest were meant to bring the plight of prisoners to the public's attention rather than collect hard data. Early on, these were sponsored by progressive groups such as the National Committee on Prison Labor and the Federal Bureau of Prisons. In 1903, one of the Bureau inspectors visited the Washington County Jail and found the conditions "dissatisfactory for human habitation."<sup>428</sup> The deteriorating condition of jails across Vermont was a primary reason the Legislature passed the Prison Labor Law in 1906. It would allow the county jails to bring in funds and reduce the time prisoners spent in the decrepit jails.

Tracy confirmed the inspector's report upon reflection. He told an audience at a conference of the American Prison Association that when he was appointed Sheriff of Montpelier, he found the jail (with a capacity of 80) filled with "idle" and poorly fed cons who were "going out into the world, from their

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<sup>427</sup> Hart, Hornell. *Employment for Jail Prisoners in Wisconsin*, 1922, 15.

<sup>428</sup> "Federal Bureau of Prisons, Inspection Report, Washington County Jail, Montpelier, Vermont," c. 1925, Records of Prison Industries Reorganization Administration, National Archives, College Park.

terms of imprisonment, weaker mentally, morally, and physically."<sup>429</sup> Tracy made it clear that he believed labor was both the cure for idleness and the deterioration of the county jails, a sentiment that correlated to the more significant national "prison labor problem." Tracy deflected criticism by assigning problems to those who came before him while at the same time boldly accepting responsibility for fixing the system in Vermont.

Later in his career, Tracy also echoed language that might appear in a college criminology textbook. Displaying both "progressive" and environmental sentiments, he regarded his prisoners as "unfortunates" who were victims of the "force of circumstances" that had led them to crime. Like mainstream criminologists of the era, Tracy suggested that personal history mattered when evaluating and dealing with criminals, and this became especially important to him when thinking about putting people to work.<sup>430</sup> Tracy's environmental sentiments went even further in some cases. In a 1911 talk he gave to a local gospel group, Tracy criticized Vermont's state prisons' system of work, saying they were ineffective because the work did not account for the differences in the convicted. "Hardened criminals and first-time offenders are forced to work "hand in hand."<sup>431</sup> This is especially interesting because the idea that it was

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<sup>429</sup> Frank Herbert Tracy. *How the Vermont Plan Reforms Jail Prisoners*, 1922, 4.

<sup>430</sup> Frank Herbert Tracy. *How the Vermont Plan Reforms Jail Prisoners*, 1922, 3.

<sup>431</sup> "Tracy Talks on Prison Labor," *Montpelier Evening Argus*, November 5, 1911.

dangerous to mix prisoners convicted of crimes of varying severity was a strong focus of the U.S. reformatory movement, which sought to remove first-time offenders from more serious or repeat offenders.<sup>432</sup> Tracey was not the only one outwardly concerned about mixing criminals of different categories in County Jails. Hornell Hart states that the county jail has a reputation as a "source of corruption and a school of crime." He explained that the chief cause for this is the mixing of different classes of criminals and idleness, which "prevails almost universally in county jails."<sup>433</sup>

Tracy's rhetoric and the Vermont Prison Labor Law also aligned with progressive ideas on criminal dependent support. Among the most influential groups dealing with prison labor was the National Committee of Prison Labor (NCPL), a New York-based, predominantly women's progressive group that was instrumental in dismantling the New York State contract system (see Chapter 4). Led by Helen Varick Boswell, the Chairwoman of the Industrial Relations Board of the Federation of Women's Clubs in New York, and the sociologist Ernest Stagg Whitten, one the NCPL's leading platforms against the practice of prison labor revolved around the problem of dependents—being the family dependents of the convicted. The NCPL strongly advocated for a minimum wage to be paid to

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<sup>432</sup> Ibid.

<sup>432</sup> Pisciotta, *Benevolent Repression*.

<sup>433</sup> Hart, "Employment for Jail Prisoners in Wisconsin," 19–20.

prisoners. They did this for two reasons. First, they believed requiring a state-imposed minimum would reduce competition between prison and free labor. Second, and more importantly, they believed that prisoner wages should rise to a level where the money could support prisoners' dependents.<sup>434</sup> When discussing the Vermont Prison Labor Law, Tracy said that the Legislature passed it because so many of the jail incarcerated have dependents.<sup>435</sup> The Vermont law reflected concerns of idleness and the fate of prisoners' dependents, though the law only enabled individual counties to pay prisoners; the law did not require that money went to dependents, although it did require that any remaining balance "...shall be turned over to the state treasury."<sup>436</sup>

Vermont was not the only state concerned about dependents and the potential role work release could play in alleviating that concern. In a speech entitled "The Ideal Prison System," delivered before the Pennsylvania Prison Society in 1913, Massachusetts Governor Eugene N. Foss referred to Frank Tracy as a "progressive and humanitarian officer" and called for the adoption of a "new and just form of a prison sentence" similar to Vermont's across the country<sup>437</sup>

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<sup>434</sup> General Federation of Women's Clubs, *Proceedings of the General Federation of Women's Clubs, San Francisco, June 1912* (New York: General Federation of Women's Clubs, 1912).

<sup>435</sup> Tracy, *How the Vermont Plan Reforms Jail Prisoners*.

<sup>436</sup> Vermont State Legislature, *Prison Labor Law, 1906*.

<sup>437</sup> Morrison I. Swift, "Humanizing the Prisons" *The Atlantic Monthly*, August 1911, Vol. 108, No. 2.

Like Whitin and NCPL, Foss advocated for an institution that would preserve the family unit, and he cited the success of the work release programs adopted in Massachusetts in 1912. The "9,888 married prisoners" in Massachusetts jails, "despite being lawbreakers, had at least supported their families." Foss asserted that prisoners "would be glad to continue to do so" if given the opportunity.<sup>438</sup> The reformers' concentration on maintaining prisoner responsibility to dependents was only one side of the foundation of work release. There were also economic and social considerations. What happened to families with the male breadwinner incarcerated? According to the Governor, "When we beggar a prisoner's family, destroying the self-respect of his wife and children, we not only make them charges upon the public but are in great danger of turning the man himself into an anarchist, a hater of God and human society."<sup>439</sup> Why should the families of the imprisoned become financial burdens of the state, when inmates were perfectly capable of working? For Foss, the answer was simple. Those prisoners "who would shirk this duty, should be forced to meet it squarely."<sup>440</sup>

Tracy suggested that paying convicts was essential for family security and gave inmates a sense of purpose while incarcerated. However, the fact is that

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<sup>438</sup> *The Criminal Law Review* (Thompson and Company, 1914), 70.

<sup>439</sup> *Ibid.*

<sup>440</sup> *Ibid.*

Tracy did not pay prisoners initially. The Vermont Law only enabled payment to cons but did not require it. Funds for prisoner payroll needed to come from earnings, and there was no state subsidy. After the establishment of the Vermont Prison Labor Law, Tracy split his most "trusted cons" into two groups. One group of about eight went to the Tracy farm, while another similarly sized group was sent to dig ditches for the city water being installed in downtown Montpelier. The convicts that went to the farm were supervised by Mr. Deavitt, Tracy's co-owner, who initially instructed them to cut bushes and underbrush. Tracey recounted that they were not being paid. "The men were indifferent, did as little as possible and in the poorest possible manner...."<sup>441</sup> Tracy's Road crew was left at the construction site with no guard or supervisor. Interestingly, they did not just walk away. They also did not do any work. "The men did as little as possible to avoid punishment..." a failure to which Tracy ascribed the lack of payment.

By 1908, Tracy changed his strategy and began paying prisoners. Payment to prisoners in work release programs played several essential functions. First, payment is aligned with progressive ideas about dependent support. It was also generally accepted that working for payment, however nominal, gave inmates a sense of pride and purpose. Second, payment was a vital tool of control. Once

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<sup>441</sup> "Tracy Talks on Prison Labor"

Tracey began paying the county prisoners, he claimed in 1922 that 3,500 different labor commitments had been made with local employers, with an average of \$10,000 was given to the state treasury, \$15,000 to buy clothing, and \$20,000 to the men and their dependents. Tracy said, "I believe then, as I do not, what there is in every man, however low he may have fallen, a spark of nobility that may be touched and a feeling of pride that may be awakened if the right method is used." "No matter where a man comes from, no matter what his offense, no matter how long his sentence, if his home is here or California, he goes to work."<sup>442</sup> In a paper from 1922, Hornell Hart credited Tracy for eliminating the difficulties associated with employing local and county inmates by finding work by the day with farmers and other employers near the jail.<sup>443</sup> Tracy certainly did take opportunities for work as they came his way. He even arranged for some inmates to maintain their employment. For example, Joseph Platt, a granite cutter who worked in Barre, was allowed to maintain his position during the day while returning to the jail at night.<sup>444</sup>

Tracy, Hart, and other work release leaders suggest that paying cons is about giving their dependents security and cons a purpose—this might be true. However, payment for work was not always about helping prisoners'

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<sup>442</sup> Tracy, *How the Vermont Plan Reforms Jail Prisoners*, 6.

<sup>443</sup> Hart, Hornell. *Employment for Jail Prisoners in Wisconsin*, 1922, 9.

<sup>444</sup> "Tracy Talks on Prison Labor"

dependents. Paying prisoners was also a tool used to get them to come back. If the penal labor program revolves around prisoners leaving the jail during the day, it would not be very successful if they did not come back—though in some cases, missing prisoners were desirable. The fact that cons were paid, but the Sheriff collected the money suggests a significant strategy to hold cons accountable. If the convicts had dependents nearby, then money would be dispersed to them regularly. A convict in this circumstance would be less likely to run away because he has a direct connection to the community. If he did not have dependents, the money would be held until discharge, meaning they would get nothing if they ran away. This might be similar to how factories held employees' money "for safekeeping" to maintain their employment and overall control. Tracy utilized other tools to incentivize good behavior and rewarded those who posed no threat of running by allowing them to go to "moving picture shows" and "spend time in the street when not employed" without uniforms.<sup>445</sup>

A combination of incentives such as free time and pay satisfied the progressive desire for prisoners to aid dependents and feel like production citizens, but Tracy and others also used it as an essential control tool. Unlike state prisons of the early twentieth century, local jails had more accountability because, like colonial surveillance, it was based on local knowledge and

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<sup>445</sup> Hart, "Employment for Jail Prisoners in Wisconsin," 25; Tracy, *How the Vermont Plan Reforms Jail Prisoners*.

connections. In other words, the pre-urban system of colonial surveillance that kept most people in check through knowing and association with one another continued to exist in local and county jails. Hereby, most (but not all) cons have connections to the local community. In cases where there were no connections, connections were made with the employer, offering some accountability.

Strangers not from town were also likely more restricted—they were probably the last to get jobs. Also, if the sheriffs bought into work as rehabilitative as Tracy, then they would have focused that rehabilitative potential on the cons of their communities.

In cases outside of Vermont, community surveillance appears to have been essential in functioning local and county jails. In most cases, the jail was located outside of an urban environment, where personal accountability was limited, and people could easily slip away. In Middletown, Connecticut, a small city and the seat of Middlesex County, a jail was built in the nineteenth century in the downtown area near the courthouse. A second jail was constructed in a town 15 miles south in Haddam, a small rural community. Both of these jails were small until the 1890s, when the county jail in Haddam was expanded to house approximately 100 inmates (both men and women) from the county. In 1910, the Connecticut General Assembly adopted a similar law to the Vermont Law, allowing inmates to work for outside employers during the day. After that time, Middlesex County Jail inmates worked on the docks of the Connecticut

River processing shad or working in local farms. Hartford County inmates worked their summers in the Connecticut Valley shade tobacco harvesting.

### ***Idleness concerns infiltrate the Local and County Jail Debate***

Terrible jail conditions, increased prisoner populations, and concerns over convicts' dependents were all concerns in the national debate around state prisons between the 1870s and 1920s. The attack on the contract and lease systems—the most popular forms of prison labor—created much downtime for prisoners (see Chapter 4). Without the relationships with private manufacturing firms to keep prisoners busy, prison administrators, reformers, and professional criminologists decried the potential of "idleness." The lack of work led prisoners toward tendencies of insubordination (see Chapter 3). The concerns over prisoner idleness also infiltrated debates over work release. Frank Tracy told a crowd at the National Conference of Social Work in 1918, "...under [the] old law...men were not allowed to work. Their time was spent in idleness. They went from their terms of imprisonment worse mentally and physically than when committed."<sup>446</sup> Three years later, the sociologist Hornell Hart, who supported Tracy's program, said, "The chief causes of the admitted evils of the county jail system are found...in the idleness which prevails almost universally in county

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<sup>446</sup> National Conference of Social Work, *The Social Welfare Forum: Official Proceedings of The National Conference of Social Work Annual Meeting* (New York: Columbia University, 1919), 253.

jails."<sup>447</sup> In 1931, the Princeton sociologist Louis Robinson dedicated an entire chapter from his book "Should Prisoners Work?" He wrote extensively about the long-term effects of idleness on one's ability to reenter society.<sup>448</sup> Robinson believed labor was essential to prisoner rehabilitation and represented the majority opinion in criminological circles.

Idleness and its associated effects became the battle flag for the supporters of prison labor on all fronts. For others, especially politicians and the public, idleness was not a rehabilitation concern but one of retribution. Another concept popularized in the late nineteenth century that informed work release was the retributive theory of punishment: the belief that prisoners should "pay" the victims of their incarceration through the fruits of their labor. According to the theory, there were two victims when a person committed a crime. The first was the state itself, which assumed the financial responsibility of housing criminals. The second was the convict's dependent family (if they had any), whom they had left to fend for themselves. Oddly, the actual victims of crimes did not seem to be a critical issue in these debates.<sup>449</sup> The retributive theory also

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<sup>447</sup> Hart, "Employment for Jail Prisoners in Wisconsin," 32.

<sup>448</sup> Robinson, *Should Prisoners Work?*

<sup>449</sup> A.F. Allison, *Manufacture's Standpoint on Prison Labor, Proceedings of the National Crime Commission* (Chicago: International Association of Garment Manufacturers, 1927).

revolved around the thought that hard labor could be punitive and, therefore, deter crime.

All these factors became apparent in 1913 when the State of Wisconsin passed the Huber Law. The Huber Law was similar to the Vermont Prison Labor Law, though it sprouted a much more prominent and influential program. Indeed, the Huber Program provided a model for work release into the mid-twentieth century. The story goes that Henry A. Huber, an attorney and state senator from Dane County, was distraught when he witnessed prisoners at the local jail "[spending] their time smoking, chewing tobacco, and playing cards while the respectable citizens toiled."<sup>450</sup> Reacting to a letter inquiring as to Huber's support for a work release program, he wrote, "The thought came to me that the jail prisoners, ordinarily, are not criminals of the hardened type; that instead of being incarcerated in jail they ought to be put to work and their earnings paid to their dependents." "I could see no good reason why the prisoner should be fed and housed at the expense of the public, and [while] his family also...become[s] a public charge."<sup>451</sup> Huber's condemnation of county prisoners as deadbeats who ought to be given something useful to do reflects debates elsewhere in the country. The characterization of deadbeat dads and

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<sup>450</sup> Robert Yoder, "Wisconsin Throws Them Out of Jail," *Saturday Evening Post*, 1956.

<sup>451</sup> "Henry Huber," 143.

horrible husbands locked up in the county for some petty crime extended beyond politicians into popular discourse. A fascinating example is an article in the *Washington Bee* from 1914 entitled "Wisconsin Law and Aid to Wives. The author of the piece described the Huber Program as a wife's tool, a "new whip...to bring lazy and bad husbands to time."<sup>452</sup>

While the variation in political motivation to establish work release laws gives insight into varying perspectives about idleness and prison labor generally, Wisconsin is particularly interesting because it underscores the strong motivation for jail administrators to adopt the system. That would be the system's legal or extralegal financial benefits to individuals and smaller institutions. Although anti-contract labor sentiments surged in this period, work release's connection to the private industry was not stunted. In fact, as in Vermont, Connecticut, and Massachusetts, Wisconsin jail administrators relied on private enterprise to hire their convicts. Under the Huber Law, the prisoner received compensation, and this was the first work release law in the country that mandated payment to prisoners, while the other laws enabled it.<sup>453</sup> The county jails received a portion of the prisoners' pay, and this was an essential source of income for smaller institutions with limited financial resources.

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<sup>452</sup> "Wisconsin Law an Aid to Wives," *Washington Bee*, January 24, 1914.

<sup>453</sup> Wisconsin State Legislature, *Huber Law*, 1913. Huber Law.

Early work release proponents wanted to instill values of work into county jail prisoners and raise funds for their dependent families. That was the idea. In practice, however, some cases of early work release operated far outside the parameters of its ideological foundations. Right from the beginning, Wisconsin's program had hints of corruption and disorganization. The work release program created by the Huber Law required employers to pay prisoners prevailing wages, which the Sheriff would collect. The law required the Sheriff's department to save the money until the prisoner's sentence expired. If the prisoner had a family, they would receive his income regularly. Released prisoners or their families, however, did not receive all of the money collected. In 1919, for example, the Rock County work release program—at the time, Wisconsin's most considerable—collected prisoner earnings of \$16,000. Of that total, the Sheriff's Department distributed only \$11,000 to the prisoners or their dependents. It was common for work release programs to take a percentage of prisoner's earnings—a fact in itself countered the arguments for "prevailing wages." Male prisoners in Tracy's Vermont program in 1911 earned a total of \$1.75 a day, 75 cents of which the prisoners or their dependents ever received. The remaining dollar went to the Sheriff for ambiguous "expenses," according to a *New York Times* article.<sup>454</sup> It is possible that money was set aside for program

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<sup>454</sup> "Out-of-Prison Work for Prisoners," *The New York Times*, September 16, 1911.

expenses in Wisconsin, although the Huber Law did not explicitly state that the Sheriff's Department could dock pay for this purpose.<sup>455</sup> Even if this were the case, it does not account for the fluctuation in the percentage of earnings held back by prisoners or their families year after year. While the figures for these early programs are sparse, we know that in the next year, 1920, of the \$17,000 reported in earnings, the Sheriff's Department paid out only \$6,000.<sup>456</sup>

Political corruption only added to the problems of Wisconsin's Rock County program. The Huber Law stipulated that sheriffs who operated work release programs could not serve in that capacity for more than two consecutive terms, a measure likely intended to avoid the development of illicit relationships (kickbacks and favoritism) between the Sheriff and certain employers and in the case of Rock County, the Sheriff Cash Whipple managed to stay in office much longer than the law allowed. When the State of Wisconsin stepped in--pressuring Whipple to resign from his post, Whipple's brother became Sheriff. After the brother's tenure expired, Cash was reelected Sheriff and resumed his leading role in the Rock County work release program.<sup>457</sup> It appears that the

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<sup>455</sup> Henry A Huber, *State of Wisconsin, Huber Law*, 1913.

<sup>456</sup> G. M Parker et al., *Private Employment for County Jail Inmates: A Survey of Wisconsin's Huber Law*. (Madison: State Dept. of Public Welfare, Division of Corrections and Bureau of Research and Statistics, 1957).

<sup>457</sup> Ibid.

state of Wisconsin had little oversight of its programs, and the sheriffs ran them with a great deal of autonomy.

Program defects were not only a question of missing money or lax oversight. Incompetence plagued the system. In one case, a prisoner on work release employed in a local factory in Rock County absconded for an entire week before the Sheriff even realized he had failed to return to the jail. There were many cases of runaways from work release in Wisconsin, and they served as the most salient criticisms of the program at the time. However, we should question the Sheriff's Department's incompetency concerning missing prisoners since the department received funds for each prisoner it housed. Therefore, it might not have been in the interest of the Department to report missing misdemeanants who were not of the "hardened type." Despite the contemporary criticisms of runaways and lax organizations, most prison reformers believed the program succeeded. Hornell Hart wrote, "Every prisoner placed out to work takes his meals away from the jail reduced the amount paid out by the Sheriff for food, and hence increases his profits...Even if the prisoner escapes, the financial effect is still favorable for the Sheriff."<sup>458</sup>

The Rock County example highlights two characteristics of early work release's function. First, programs were rife with corruption potential, lack of

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<sup>458</sup> Hart, "Employment for Jail Prisoners in Wisconsin," 34.

oversight, and lax organization. Second, it illustrates that work release programs were growing in participation and earnings for the Sheriff's Departments. It would be remiss to claim that this was only true in the five states that established programs through law. In 1914, for example, the Federal Bureau of Labor Statistics gathered work data for county and municipal jails in seventeen states, 123 counties, and the District of Columbia (Congress did not institute work release in D.C. until 1965). While the Bureau of Labor did not explicitly refer to "work release," the data nonetheless indicates that many prisoners in the surveyed states worked outside employment. For example, of the counties and municipalities that responded to the Bureau's survey, 17,152 misdemeanants worked out of local or county jails in maintenance, farming, construction, and manufacturing.<sup>459</sup> Considering this number represents the inclusion of 123 institutions out of an estimated three to four thousand in 1914, the potential number of work release participants could have been much higher.<sup>460</sup>

Reformers, criminologists, and politicians had a hard time streamlining and standardizing prison labor practices in state prisons nationwide. How would they do the same in the thousands of locally controlled county prisons? The

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<sup>459</sup> *Federal and State Laws Relating to Convict Labor*. (Washington: Govt. Print. Off., 1914).

<sup>460</sup> Robinson, 25

short answer is that they did not, though programs nationwide quickly adopted legislation similar to the Huber Act during the First World War. In this period, the state prison and state-use manufacturing system saw a rapid increase, and states quickly took advantage of the surplus of workers housed in county jails to fill labor shortages in local farms, businesses, and factories.<sup>461</sup> The potential for work release to fill labor shortages during times of war garnered the federal government's attention, which adopted an entirely new system called Public Works and Ways in which prisoners were set to work on roads, parks, and public buildings. This was a modified version of the state-use manufacturing system but with prisoners leaving the prison facility.<sup>462</sup>

### ***Work Release as a National Debate***

By 1928, there was sufficient data to understand the nature of early work release nationally. A survey conducted by Louis N. Robison and the National Committee on Law Observance between 1928 and 1930 indicates that within 18 states (that responded to the survey), there was a total prison population of 47,869 misdemeanor prisoners. 19,363, or about 40 percent, were reportedly engaged in work outside the prison walls.<sup>463</sup> The survey did not include statistics

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<sup>461</sup> "Make State Prisoners Work, Is Advice of Governor Phillip," *Duluth News-Tribune*, July 8, 1918.; Hornell Hart, *Employment for Jail Prisoners in Wisconsin, 1922*, 14.

<sup>462</sup> Frank Carlton, *The History and Problems of Organized Labor*, 1911, 424-430.

<sup>463</sup> Louis Robinson, *Employment in Institutions for Misdemeanants, 1928-30* in Louis N. Robinson, *Should Prisoners Work? A Study of the Prison Labor Problem*

for large municipalities except for Detroit and New York City. These numbers indicate that many county jails practiced work release—or something similar—without the aid of state law. Not only were the programs operated without state decree, but many state governments had no oversight and, in some cases, no awareness regarding the nature of work programs practiced in their county jails. For example, in seventeen states, state officials reported they knew nothing about the state of employment in their local and county jails.<sup>464</sup>

What early work release looked like is difficult to surmise from the data. The categories of "maintenance, farm work, construction, and manufacturing" in the Bureau of Labor's statistics give little indication as to the specific tasks prison workers performed. There are, however, some potential broad characterizations. Work release during the pre-1956 period can be broken down into two categories, which we will call flexible and standard work release. Status determined who received flexible work release, likely the more palatable of the two. A prisoner in a county jail who was of some social or economic standing owned their own business, or already worked could petition for work release, or the judges could mandate it at sentencing. In 1927, for example, a court

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*in the United States*, (Philadelphia: John C. Winston Co., 1931); Of these 19,363 prisoners, the most common work was ambiguously referred to as "maintenance work," with 4,019 employed in that category. Roadwork was also exceptionally common with 2,651 employed. Farm work employed 2,057. Interestingly, industrial employment accounted for only 764.

<sup>464</sup> Robinson, 37.

sentenced a former professor at Columbia University named Alexander Goldenweiser to New York City's Ludlow Street Jail for missed alimony payments. When a publishing house offered Goldenweiser an opportunity to write in *The Encyclopedia of Social Science*, the court granted him work release.<sup>465</sup>

It was the vagrants, poor, and unemployed who participated in standard work release—the farm work and construction labor. But all jobs are not created equal, and the division of work was likely based on race, with white prisoners receiving the less intensive work and black prisoners withstanding the worst labor.<sup>466</sup> Construction work for the county and local prisoners in the 1920s was probably similar to the southern chain gang system that was so prevalent for state prisoners. There are some interesting differences, however, especially regarding the role of female prisoners. For example, Florida counties mixed inmates by sex in the early 1930s. Male prisoners were housed in distance construction sites within prisoner-made barracks, and female prisoners were reportedly brought into the camps for cleaning and laundering.<sup>467</sup>

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<sup>465</sup> “Goldenweiser Seeks Release to Earn Money for Back Alimony,” *New York Times*, February 25, 1927.

<sup>466</sup> Robert T. Chase, “We Are Not Slaves: Rethinking the Rise of Carceral States through the Lens of the Prisoners’ Rights Movement,” *Journal of American History* 102, no. 1 (2015): 73–86.

Chase described a racial hierarchy on prison farms in the south. There is no reason to think that this type of racialized system did not exist for prisoners on private farms as well.

<sup>467</sup> Robinson, 36.

Despite the growth of programs, idleness, poor conditions, and lax discipline continued to be a pervasive issue. In 1923, the Federal prison inspector Joseph F. Fishman wrote *Crucibles of Crime*, in which he argued that the evil conditions of local jails and county prisons—filth, and disease with prisoners "seated on boxes, with their feet on other boxes" to keep out of the water on the floor—were a product of lack of work.<sup>468</sup> Joseph W. Sanford of the United States Bureau of Efficiency wrote of an Ohio County Jail, "The cells were littered...dark and dirty...where a better light was available, a game was in progress." "About 15 [prisoners] and two or three men apparently from the outside were in the game." "The guard explained...saying 'the boys had to have something to do."<sup>469</sup>

### **Conclusion**

Work release programs first emerged in the early twentieth century, devised as a strategic solution to alleviate the growing burden on state prisons.

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<sup>468</sup> Joseph F Fishman and Vee Perlman, *Crucibles of Crime: The Shocking Story of the American Jail*. (New York: Patterson Smith, 1923).

<sup>469</sup> United States, Federal Penal and Reformatory Institutions. *Hearings before the Special Committee on Federal Penal and Reformatory Institutions, House of Representatives, Seventieth Congress, Second Session, pursuant to H. Res 233, Seventieth Congress, First Session, Directing a Committee to Make a Survey and Report upon the Care and Employment of Federal Prisoners, Agreed to May 28, 1928. January 7, 1929 to January 15, 1929* (Washington: U.S. Govt. Print. Off., 1929).; Sanford's presence in local and county jails across the country did not indicate a federal interest in these institutions. Instead, Sanford was sent to particular local and county jails that had absorbed prisoners from overburdened federal prisons.

The outlawing of the contract system had created a significant challenge, as it rendered state prison administrators incapable of partnering with private firms to employ prisoners and fund the prison itself. Work release programs addressed this issue in two critical ways. Firstly, it strategically reduced the state prison population by absorbing prisoners redirected from state prisons through new laws and sentencing practices. This transfer not only eased the population pressure on state prisons but also opened up new opportunities for county jail administrators to generate revenue for their jails. Despite the prohibition of contract systems at the state level, these local administrators were still able to collaborate with private firms, securing employment for county prisoners. As such, work release programs enabled the continuation of the prison contract system at the local and county levels, effectively circumventing the legal restrictions placed on contract labor. Secondly, work release was seen as an essential means to introduce the concept of labor as a form of rehabilitation to a vast number of county and jail prisoners. These local and county prisoners were not typically considered for rehabilitative programs, making the expansion of work release a significant development in penal history.

## Chapter 6

### THE PRISON INDUSTRIES REORGANIZATION ADMINISTRATION OF THE CONSEQUENCE OF FAILURE

"In our well-meaning efforts to safeguard free labor from the unfair competition of prison-made goods, new problems have been created for our prison authorities."<sup>470</sup>

*--The Washington Post*

During the Great Depression, countless Americans abandoned their factory jobs to stand in soup kitchen lines. Despite their destitution and despair, there was a faint silver lining—at least they were free. They were not trapped in unemployment, monotony, and purposelessness within the husks of their once-bustling factories. This was not the case for American prison workers. The financial crisis of the 1930s influenced prison industries and prisoners' jobs as much as it did the outside world. Unlike their unemployed and free counterparts,

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<sup>470</sup> *Washington Post*, press release, June 21, 1937.

these workers remained confined within the prison walls, forced to adhere to the whims of the Warden: a desire to keep them busy and incapable of resisting their harsh incarceration.

The Depression exerted immense pressure on an already strained prison system. The financial crisis drove people to desperate measures for survival, leading to an unprecedented influx of individuals into the state's custody. The prison system, which had been expanding physically but regressing programmatically since the mid-nineteenth century, was ill-equipped to handle this additional load. The prisons, overflowing with vagrants, the impoverished, and minor lawbreakers, found themselves in a "crisis of imprisonment," characterized by infrastructure breakdown, overcrowding, insufficient staffing, malnutrition, disease, abuse, and lack of prisoner work.<sup>471</sup>

By the start of the Depression, the Federal Government was not yet involved but primed for intervention. State legislatures across the nation have debated the topic of prison labor for more than sixty years. But while previous efforts for prison reform primarily focused on the penal trifecta of rehabilitation, control, and profit, the bureaucrats and lawmakers at the nation's highest level focused almost exclusively on the economics of prison labor. Ignoring the humanitarian crisis that was early twentieth-century incarceration, they

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<sup>471</sup> McLennan, *The Crisis of Imprisonment*.

attempted to stabilize prison industries without encroaching upon what was left of equally vulnerable free industries.

After several failed legislative attempts to curb the competitive advantage of prison industries, President Franklin Roosevelt established the first federally backed prison reform agency, the Prison Industries Reorganization Administration (PIRA). PIRA's mission was not to eliminate prison industries but to control unfair competition and rejuvenate manufacturing by developing strategies and providing grants and loans to help state prison systems shift their output to an exclusively state-use market. PIRA officials believed that state-use production would stabilize prison industries by creating a steady market for prison made-goods and removing private influence and markets from the penal system.

While PIRA's mandate was economically focused, the agency was staffed by sociologists and criminologists who did not see the prison labor problem only in terms of dollars and cents. This chapter argues that PIRA's approach towards prison labor—reorienting rather than abolishing it—highlights the continued significance of labor as a control mechanism into the twentieth century. This chapter further argues that PIRA became primarily concerned about idleness, a factor that plagued prison administrators since the eighteenth century. The fear was that idle prisoners—those without work—would be more likely to cause disturbances, become violent, and resist incarceration; it is perhaps the one

major constant in this story. With the need to control prisoners and gain financial self-reliance through a state-use system as their principal goal, PIRA failed to find a suitable alternative to the contract system. In this failure, they proved that for-profit prison labor, facilitated by partnerships between private firms and state prisons, was the most programmatically effective and financially sustainable form of prison labor. Ultimately, they paved the way for the return of that exploitative system during the Second World War. While this chapter does not delve into the post-World War II era, it suggests that PIRA's conclusions were significant to adopting private prison industries in Federal Prisons under the UNICOR banner, a thriving for-profit prison system run by prison administrators at the nation's highest carceral level.

### ***A State Issue Becomes a National One***

During the twentieth century, the Federal Government's intervention in prison labor was primarily due to the failure of individual states to develop state-use systems that could sufficiently cater to their needs. The federal government was mainly concerned with the ongoing problem of competition between convict labor and free labor. This issue disproportionately affected female workers, as they were more likely to be employed in industries that were in direct competition with prison labor. Furthermore, working-class women were the group most disproportionately affected by the imprisonment of their male partners. This left them in a precarious situation, both at work and at home.

The issues surrounding prison labor drew significant attention, primarily due to the efforts of female garment workers and the backing they received from progressive women's groups in New York State. The efforts of these groups, combined with the advocacy of the female garment workers themselves, brought the issue of prison labor to the forefront of national attention, leading to increased scrutiny and intervention from the federal government. This context is particularly pertinent as Franklin Roosevelt was the first president to address the issue of prison labor from the Oval Office. New York's garment manufacturers consistently found themselves at a disadvantage due to competition from prison contract manufacturing. This issue came to a head in 1908 when a group of female garment workers from New York City penned a letter to Helen Varick Boswell, the Chairwoman of the Industrial Relations Board of the Federation of Women's Clubs in New York. In the letter, the women attributed their dwindling work hours, low wages, and job losses to the competition from prison industries.<sup>472</sup>

But an intriguing question arose: how could these workers be suffering from prison labor competition in a state where the contract system was outlawed? Although New York's penal system had ceased production of prison-made goods for the open market, the State lacked the authority to prohibit

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<sup>472</sup> "Prison Labor Leaflets", National Committee on Prisons and Prison Labor, January 1, 1911.

goods produced by other states' penal operations. As a result, the New York market was inundated with low-cost goods from these states, causing a severe undercutting of prices. To stay competitive, manufacturers were forced to slash costs, typically at the expense of their workers.

Boswell brought the complaint before the New York State Department of Labor, which assigned an investigation committee headed by Ernest Stagg Whitin, an active prison reformer.<sup>473</sup> Whitin's investigation found that over \$10,000,000 worth of out-of-state prison-made goods entered New York state annually.<sup>474</sup> While this number was a likely exaggeration, the point was clear. The banning of the contract created market opportunities for other states to cash out in New York's market. This undermined New York law and injured the domestic industries and labor force. Whitin presented his findings, and the New York Board of Labor subsequently established the National Committee on Prisons and Prison Labor (NCPPL) in late 1908. The make-up of the committee is telling. Membership included representatives from the American Prison Association and the United Garment Workers of America, notable female reformers such as Florence Kelly of the National Consumer League, Helen Boswell of the General Federation of Women's Clubs, Elizabeth Butler, a social

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<sup>473</sup> "Dr. Ernest S. Whitin, A Prison Authority," *The New York Times*, February 12, 1946, 28.

<sup>474</sup> "Prison Labor Leaflets", National Committee on Prisons and Prison Labor, January 1, 1911, viii.

researcher and reformer, as well as others. The NCPPL was vital because it was the first prison reform group that brought together three of the significant reorganization campaigners-prison reformers, women's progressive organizations, and labor organizations.

The most exciting aspect of the NCPPL was not only its inclusion of women's organizations but also that its campaign to help female workers became central to the campaign of the NCPPL. The motivations to denounce prison contracting on behalf of the APA and labor unions seem straightforward, but why were groups such as the General Federation of Women's Clubs and the National Consumer League interested in prison labor? Helen V. Boswell of the General Federation of Women's Clubs summed up their stance best when she stated, "...there are...5,000,000 or more wage-earning women who are not fortunately placed as we are, and as they are, from circumstances, on occasion like this unrepresented, it falls to us to come and speak for them."<sup>475</sup> Following a long battle waged by nineteenth-century craft unions to rid prison manufacturing of skilled labor, prison industries concentrated on low-skill operations, especially textile production.<sup>476</sup> In the free-market, low-skilled

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<sup>475</sup> Helen Boswick, *H.R. 12000, 12001, 21322, Competition of Penal Labor: Hearings Before Subcommittee No. 4, Committee on Labor, of the House of Representatives, March 8 and 23, 1910* (U.S. Government Printing Office, 1910), 7.

<sup>476</sup> Gildemeister, *Prison Labor and Convict Competition with Free Workers in Industrializing America, 1840-1890*, 14–15.

women workers dominated textile work. This meant that cheap male prison labor directly competed with women's textile jobs in the early twentieth century. The NCPPL centered its campaign on this problem.

However, the question remains: why was a reorganization and not abolishment of prison labor a focus of the NCPPL? The NCPPL believed that it was possible to reorganize prison manufacturing to not compete with the free market and, at the same time, increase convicts' remunerations.<sup>477</sup> The NCPPL was concerned with low prison wages for two reasons. First, they believed that requiring a state-imposed minimum would reduce competition. Second, and more importantly, they believed that prisoner wages should rise to a level where the money could support prisoners' dependents. As the NCPPL saw it, a man would be sent to prison, leaving his family destitute, or at best, with the matriarch providing all the financial support. While prisoners were paid, that money went to their own material needs, such as clothes. The only monetary benefit went to the manufacturing firms, which competed with free garment manufacturers, possibly affecting the same single women whose husbands were in jail.

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<sup>477</sup> General Federation of Women's Clubs, *Proceedings of the General Federation of Women's Clubs, San Francisco, June 1912* (New York: General Federation of Women's Clubs, 1912).

The NCPPL circulated thousands of pamphlets, leaflets, and bulletins to garner public support for their campaign. However, their arguments against the contract system were not limited to unfair competition and adverse effects on workers. Whitin proclaimed that the prison contract system was an "insurgent force" marching toward dismantling emancipation.<sup>478</sup> However, if his argument that prison contracting was a form of modern American slavery failed to tug at the public's heartstrings, his argument aimed at their pocket would surely get someone's attention. Manufacturers across the nation, he proclaimed, had grasped hold of the penal system to the point that prison industrial manufacturing operated at a loss for the prison. This meant that the heavy tax burdens of the prison remained on the public's back.<sup>479</sup> A.F. Allison of the International Association of Garment Manufacturers further articulated this argument in 1927 when he claimed that the only actual expense to manufacturers who engaged in prison contracting was the raw materials and labor so cheap it might as well have been free.<sup>480</sup> In 1923, for example, a prisoner in New York made an average of \$.06 per day, while the average

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<sup>478</sup> Whitin, *Penal Servitude*, 12-19.

<sup>479</sup> "Prison Labor Leaflets", National Committee on Prisons and Prison Labor, January 1, 1911, xi.

<sup>480</sup> A.F. Allison, *Manufacture's Standpoint on Prison Labor, Proceedings of the National Crime Commission* (Chicago: International Association of Garment Manufacturers, 1927).

garment worker made an average of \$3 per day.<sup>481</sup> While a capitalist venture might take on the cost of building factories within the prison, the lights, power, heat, upkeep, and every other conceivable cost that was associated with industrial manufacturing were paid for through state prison budgets.<sup>482</sup>

There were also growing attacks on the assertion that prison labor was helpful for prisoners. Proponents of the contract system still believed in the doctrine that work was inherently a necessary component of the reformation process. They also argued that prison work inculcated marketable job skills in ex-convicts. Helen Boswell argued that prison work- especially in garment manufacturing belonged to women. "Men in prisons are usurping lines of work which outside of prisons should naturally be exclusively theirs [women's]." <sup>483</sup> She argued that men did not receive jobs in the garment industry once released, so why should they be engaged in garment production in prison under the guise of "professional training"? <sup>484</sup>

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<sup>481</sup> Congressional Research Service, *Inmate Employment Programs in Federal and State Correctional Institutions*, (Washington D.C.: Government Printing Office, 1973).

<sup>482</sup> Allison, *Manufacture's Standpoint on Prison Labor, Proceedings of the National Crime Commission*.

<sup>483</sup> H.R. 1200, 12001, 21322, Competition of Penal Labor, Hearing Before the Subcommittee No. 4, Committee on Labor of the House of Representatives, March 8 and 23, 1910, (Washington D.C.: Government Printing Office), 7.

<sup>484</sup> C.F. Allen, *A Handbook of the New York State Reformatory at Elmira* (New York: The Summary Press, 1916).

The argument that prison-training programs were merely a means to justify exploitive labor became an increasingly popular assertion among anti-contract proponents. For example, the International Association of Garment Manufacturers (IAGM) appointed its Special Committee on Prisons to investigate how more "masculine" training could be incorporated into prison programs. "Can you imagine a safe-blower leaving prison to take a job at [a] sewing machine making overalls," asked A.F. Allison. "If it is intended that a man in jail shall be trained in such a way that he may become a better citizen and earn and honest living after his release, why don't the prison authorize training which will really serve such purposes?" Like Boswell, Allison argued that ex-cons could not pursue a career in garment manufacturing in the free market because "women and girls are employed exclusively" in the garment industry, except when men were employed in "managerial and executive positions."<sup>485</sup>

One of the NCPPL's most tremendous campaign successes came when they convinced significant retailers in New York City to agree not to purchase prison-made goods.<sup>486</sup> There was also an argument that prison labor was

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<sup>485</sup> "What is Needed in Prison Training: Manufacturers of Apparel Urge Change in Methods so as to Make them Useful," *New York Times*, June 11, 1922. This idea is contradictory. If men were as ineffective as Allison, and others would come to claim, there would not be a concern that they were competing with free-markets.

<sup>486</sup> "Prison Labor Leaflets", National Committee on Prisons and Prison Labor, January 1, 1911.

injuring. Unlike manufacturers that opposed the contract system on economic and cost-benefit grounds, retailers opposed the system for different reasons, as there was no clear economic benefit for them. When NCPPL and the Women's Federation approached retailers not to sell prison-made goods in their stores, many took up this call, but because they did not buy prison-made goods, their prices were also higher than stores that did. The reason why a retailer would choose not to buy prison goods is hard to nail down since they were not active participants in public debates. However, it seems clear that the retailers were endeavoring to win the favor of the Women's Federation, whose members of middle or upper-class women could afford more expensive, non-prison-made goods. Retailers were likely taking as much of a political stance as a marketing one.

The NCPPL's fight against prison contracting, especially their call to pay prisoners more, engendered an alliance with many garment-manufacturing groups. David Mosessoehn of the Associated Dress Industries of America expressed his admiration for E. Stagg Whitin and the NCPPL for "leading" the campaign against prison contracting.<sup>487</sup> However, manufacturers also began to take on distinctly political arguments, questioning the role of the State in the anti-contract debate, which intensified after World War I when many military

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<sup>487</sup> "Garment Industry Plans: To Be Discussed at Coming Convention of Manufacturers," *New York Times*, April 24, 1921, E7.

contracts ended.<sup>488</sup> "The garment and clothing manufacturers of the United States have written off enormous losses during this past year [1920]," wrote Jacob W. Mack of the Rauh and Mack Shirt Company in Cincinnati. "What are the conditions we are facing...?" he asked.<sup>489</sup> There was no doubt that cheap prison labor made prison manufacturing firms more competitive, but there was also a question about government regulation.

Manufacturers acknowledged two profound contradictions in regard to the State's policy on prison contracting. First, anti-trust laws and an increasing regulatory government seemed to exempt prison manufacturing. Mosessohn stated, "Our association [AIDA], naturally, is most interested in those lines which are made by manufacturers eligible for membership in it..."<sup>490</sup> Industrial trade groups such as AIDA were tools for early twentieth-century manufacturers to bargain strategies in an effort to survive new regulations collectively. However, since companies utilizing prison labor were not subjected to the same regulations, they did not belong to trade organizations and thus did not follow

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<sup>488</sup> A push for the reorganization of prison goods for state use after World War I may have been a mistake on the part of the garment industry. Prison industries, eventually reorganized for state-use, would go on to produce uniforms and other canvas goods during World War II, taking away many future contracts those garment manufactures. Of course, those manufactures did not have the benefit of hindsight.

<sup>489</sup> "Garment Industry Plans: To Be Discussed at Coming Convention of Manufacturers."

<sup>490</sup> "Competition with Work of Convicts." *New York Times*, May 21, 1923, 27.

the codes set in those organizations. A garment manufacturer named I. Ginsberg, of the I Ginsberg & Bros., eloquently argued another interesting contradiction: "To permit prison-made merchandise to be sold in the open market destroys the very principle Congress had in mind when it enacted the Protective Tariff Bill [the McKinley Tariff of 1890] to protect American labor against competition with the cheaper labor of foreign countries."<sup>491</sup> Yet the federal government did nothing to protect free labor from a cheap domestic cheap labor source: prison labor.

### **Interstate Commerce as a Road to Federal Intervention in Prisons**

Before 1929, national prison reform policy was primarily driven by private groups and individual states, focusing on county and state prison systems. Private organizations like the American Prison Association and advocates of the American Reformatory Movement had to rely on persuading individual state legislators to adopt model legislation for any substantial and far-reaching impact. One such influential model was the McDonough Amendment, implemented in New York State in 1890, which prohibited private prison contracting. Over the following decade, 15 state legislatures in the northern United States followed suit, enacting laws to curtail or eliminate prison labor in their respective jurisdictions.<sup>492</sup>

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<sup>491</sup> Ibid.

<sup>492</sup> *Federal and State Laws Relating to Convict Labor.*

However, these state laws contained a critical flaw. When one state banned for-profit prison labor, it lacked the authority to prevent neighboring states from importing goods produced by inmate labor across their borders.<sup>493</sup> This often led to reinforcing the contract system in other places. States like New Jersey, Massachusetts, and Pennsylvania saw the contract system thrive, becoming more exploitative.<sup>494</sup> This interstate issue, combined with growing concerns over unfair competition, not the humanitarian crisis of American prisons, facilitated Federal involvement in state prisons, primarily due to influential reform groups such as the National Committee on Prison Labor out of New York State.

The power of Congress to regulate interstate commerce was crucial in the passage of the Hawes-Cooper Act in 1929 and the Ashurst-Sumners Act in 1935. These Acts sought to regulate the interstate transport of prison-made goods, effectively curtailing the prison labor contract systems.<sup>495</sup> By leveraging its power to regulate interstate commerce, Congress imposed significant

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<sup>493</sup> E. Stagg Whitin, "The Caged Man: A Summary of Existing Legislation in the United States on the Treatment of Prisoners," *Proceedings of the Academy of Political Science in the City of New York* 3, no. 4 (1913): 3–117; E. Stagg Whitin, *Penal Servitude* (New York: National Committee on Prison Labor, 1912).

<sup>494</sup> *Ibid.*

<sup>495</sup> United States, Prison Industries Reorganization Administration, and Richard E Elwell, *Chart and Comment on Laws Affecting the Labor of Prisoners and the Sale and Distribution of Prison-Made Products in the United States*. (Washington: U. S. Govt. Print. Off., 1938).

restrictions on the for-profit prison labor industry, but this action was not without consequence. Congress understood the implication of these acts, knowing that they would effectively dismantle existing for-profit prison labor. With this understanding, the Hawes-Cooper Act would not take effect for another five years, allowing for a transition period, however brief.

Limiting interstate commerce was not the only congressional effort to curb for-profit prison manufacturing. In that transitional period, the Hawes-Cooper Act required that any prison-made goods being sold on the open market must be clearly labeled "so that the name and address of the shipper, the name and address of the consignee, the nature of the contents, and the name and location of the penal or reformatory institution where produced wholly or in part may be readily ascertained on an inspection of the outside of such package."<sup>496</sup> These transparency requirements significantly impacted the sale of prison-made goods. As public opinion became more hostile towards prison labor and unfair competition, the increased transparency was detrimental; now, people shopping in department stores could see that prisoners made their socks and shoes. Contractors made attempts to repeal the interstate commerce ban. Several court cases, such as the 1936 case of *Whitfield v. Ohio and The Kentucky Whip and Collar Company v. The Illinois Central Railroad Company*, upheld the

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<sup>496</sup> *Federal and State Laws Relating to Convict Labor.*

legitimacy of the Hawes-Cooper Act. These court rulings affirmed Congressional and, thereby, state authority to regulate or ban the sale and distribution of prison-made goods within their borders, even if these goods were manufactured in other states and imported.<sup>497</sup>

***The Ulman Committee, the Prison Labor Authority, and the Prison Labor***

***Compact***

The primary goal of the interstate commerce restrictions on prison-made goods was to protect free industries in states that had limited or eliminated for-profit prison manufacturing. In protecting free industries, these laws negatively impacted prison industries across the industrialized North and, with them, the principal tool of control and rehabilitation. A Washington Post article summed it up best: "In our well-meaning efforts to safeguard free labor from the unfair competition of prison-made goods, new problems have been created for our prison authorities."<sup>498</sup> If the Federal Government was going to be involved effectively, it needed to do so in a balanced manner, both protecting the interests of free industries while also protecting labor in prisons.

In that effort, President Franklin D. Roosevelt's National Industrial Recovery Board (NIRB) formed a committee to investigate potential solutions to

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<sup>497</sup> United States, Prison Industries Reorganization Administration, and Elwell, *Chart and Comment on Laws Affecting the Labor of Prisoners and the Sale and Distribution of Prison-Made Products in the United States*.

<sup>498</sup> *Washington Post*, press release, June 21, 1937.

the competition between prison labor and free industry. Roosevelt's involvement in prison issues was not new; he had previously established a Commission to investigate prison administration and construction in New York State during his tenure as governor.<sup>499</sup> His continued interest demonstrated his commitment to addressing the challenges posed by the prison labor system, particularly in light of the economic crisis.

In 1933, the NIRB established the Ulman Committee, named after its chair, Judge Joseph N. Ulman. The committee consisted of a legal, criminologist, and labor relations expert. Judge Joseph N. Ulman (1850-1907) served as the legal expert, leveraging his experience as a former Judge for the Circuit Court of Baltimore and President of the National Prison Association. The committee also included Frank Tannenbaum, Ph.D. (1893-1969), an American sociologist and historian recognized as the founder of the criminological "labeling theory." The third member was W. Jett Lauck (1891–1970), an economist and labor expert known for his work on labor relations, wages, and social policy during the New Deal Era.<sup>500</sup>

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<sup>499</sup> *Report by the New York State Advisory Committee on Prison Industries to the Commission to Investigate Prison Administration and Construction.* (Albany, 1932).

<sup>500</sup> Ulman Committee, "A Plan to Effectuate the Recommendations of the Ulman Committee on Prison Competition," n.d., Prison Industries Reorganization Administration, General Correspondence, National Archives and Records Administration.

The Ulman Committee's primary mandate was to thoroughly investigate the impacts of prison labor on various industries and suggest appropriate solutions, and their investigation almost solely focused on free industries and not the prisons themselves. As part of the NIRB's more comprehensive efforts to address industry challenges during the Great Depression, the committee embarked on a detailed study of this complex issue. They conducted hearings, gathered data, and interviewed workers, employers, and stakeholders to understand how prison labor affected different industries. The committee found that the garment industry faced significant challenges due to prison labor competition and recommended federal intervention to limit this competition.<sup>501</sup>

However, during their investigation, the Ulman Committee members recognized the importance of prison labor and were concerned that their recommendations could disrupt the system further. Consequently, they suggested that the federal government assist states in addressing the prison labor problem. They proposed that the federal government allocate funds, staff, and guidance to help states reorganize their prison industries and promote a practical and universally applicable state-use system.<sup>502</sup>

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<sup>501</sup> Ulman Committee, "Report by Commission to Investigate Prison Administration and Construction Presented to Governor Franklin Roosevelt December 22nd," n.d., Prison Industries Reorganization Administration, Burton Oppenheim Files, National Archives and Records Administration.

<sup>502</sup> Ulman Committee, "A Plan to Effectuate the Recommendations of the Ulman Committee on Prison Competition."

To facilitate this, the NIRB allocated \$50,000,000 in funding. The Public Works Administration (PWA) conducted surveys of state-use markets and prison facilities to establish and operate this system of prison industries for five years in states that passed the necessary legislation. Despite some disagreements between the Ulman Committee and the PWA, particularly regarding the efficacy of the state-use system, both parties agreed that federal aid was crucial for adopting state-use plans in states where it had not been implemented.

The PWA's primary goal was to develop recommendations for prison administrators dealing with the impending Hawes-Cooper Act and other existing restrictive state legislation. NRA officials assisted in this effort, developing a series of codes of fair competition known as the Prison Labor Compact.<sup>503</sup> This initiative aimed to introduce prison-made goods at fair and competitive prices to the open market. The Prison Labor Authority (PLA) was established to oversee the Compact, consisting of nine members—six elected by signatory states and three appointed by the President. One professional employee, Howard B. Gill, was also an Economic Adviser. Despite these efforts, the Prison Labor Compact failed to address complaints against unfair prison competition to the desired

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<sup>503</sup> Vernon J Clarke, *The Prison Labor Problem Under N.R.A. Administration and the Prison Compact*. (Washington, D. C., 1936).

extent. The NIRB recognized the need for a more extensive organization to tackle the challenges surrounding prison labor and unfair competition effectively.<sup>504</sup>

### ***The Prison Industries Reorganization Administration***

The Prison Industries Reorganization Administration (PIRA) was established on September 26, 1935, through Executive Order 7194, under the National Industrial Recovery Act of June 16, 1933. The primary responsibilities of PIRA included conducting comprehensive "surveys, studies, and investigations" of industrial activities within prisons and their potential markets. The organization was also charged with creating a program of projects to alleviate any "undue competitive burden" on private industry and labor, eliminate idleness among inmates, and establish an effective rehabilitation system.<sup>505</sup> In addition, PIRA was authorized to recommend and administer loans or grants to different jurisdictions. The governing board of PIRA was comprised of appointees who had previously been involved in efforts to address the prison-labor problem. These members served throughout the existence of PIRA. The board included the Hon. Joseph N. Ulman of Maryland, former chairman of the Ulman Committee appointed by NRIB and long-time President of the Maryland Prisoners' Aid Association. Louis N. Robinson of Pennsylvania, a professor, an

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<sup>504</sup> "Work Materials," 1935, Prison Industries Reorganization Administration, General Correspondence, National Archives and Records Administration.

<sup>505</sup> *Executive Order 7488, Designation of Louis N. Robinson as Chairman of the Prison Industries Reorganization Board*, 1936.

authority on prison labor, and author of the influential book "Should Prisoners Work?" (1931), was also on the board. Linton M. Collins of Florida, who had administered the NRA functions of the Prison Labor Compact and played a significant role in keeping the Ulman Committee recommendations alive, was another member. James P. Davis of Maryland, former secretary of the Ulman Committee and a staff member of the Research and Planning Division of the NRA, and Gustav Peck of New York, former executive secretary of the Labor Advisory Board of the NRA, were also part of the governing board.

While PIRA was seemingly a comprehensive organization examining all aspects of prison labor, its effectiveness was hampered from the beginning. Initially, PIRA was promised a budget of \$50,000,000 to encourage state prison systems to adopt a state-use system. However, this amount was never received. Instead, a paltry sum of \$100,000 was allocated from the Emergency Relief Appropriation Act of 1935 for administrative expenses.<sup>506</sup> This lack of funding presented a considerable setback, as the original sum incentivized states to restructure their prison industries.

PIRA's initial route for progress was quickly thwarted. The organization had suggested expanding prison labor into public works, as the private-prison manufacturing sector was limited, and the market for prison-made goods was

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<sup>506</sup> *Emergency Relief Appropriation Act of 1935, 3, 42, 1313 Nt. Hide 45 CFR. 212, 1935.*

restricted to state use.<sup>507</sup> PIRA conducted supplementary investigations examining methods for employing prisoners in road, forestry, or conservation work.<sup>508</sup> The board believed that outdoor work represented a significant opportunity to provide prisoners with constructive and healthy employment. However, this concept was abandoned with New Deal's growing emphasis on creating jobs through public works programs, making the idea of using prison labor for these projects short-lived. While many prisoners and destitute Civilian Conservation Corps (CCC) members likely had much in common, social and political attitudes emphasized helping poor kids stay out of jail instead of helping the ones that already found themselves behind bars. There was some talk of prison goods being used to support people experiencing poverty, not only state use, as a way of increasing production, but that was never explored far.

The federal government had already stopped the transportation of prison-made goods across state lines, dealing a significant blow to the contract system. In 1936, they further banned the use of contract labor on federally funded highways and work projects. The Walsh Healy Act, passed on June 30, 1936, extended this prohibition to for-profit prison production (road work or

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<sup>507</sup> *Walsh-Healy Act, 1936.*

<sup>508</sup> Louis Robinson, "Federal Aid Highway System," 1935, Prison Industries Reorganization Administration, General Correspondence, National Archives and Records Administration.

manufacturing) in any prison that received state funding.<sup>509</sup> This rule was also adopted by the Bureau of Roads in the Department of Agriculture in 1935: "And none of the money here inappropriate it shall be paid to any state on account of any project on which convict labor shall be employed, except this provision shall not apply to convict labor performed by convicts on parole or probation."<sup>510</sup> This prompted PIRA officials to make an official statement. PIRA officials blamed Congress for " seriously affecting the operation of state prisons by restrictive legislation on the sale of prison products and should, therefore in fairness and good common sense, help the states to find ways of meeting these problems."<sup>511</sup> The organization recognized the interconnectedness of all aspects of a prison system and concluded to make practical recommendations. It was necessary to investigate state-use industries and their potential markets under existing laws and factors that could affect rehabilitation possibilities. These factors included the adequacy of housing, study, and training facilities, the size and nature of the prison population, and the implementation of probation and parole systems.

### ***PIRA Survey Findings***

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<sup>509</sup> Ibid.

<sup>510</sup> "Department of Agriculture," 1935, Prison Industries Reorganization Administration, General Correspondence, National Archives and Records Administration.

<sup>511</sup> "Statement from Judge Hobbs," 1935, Prison Industries Reorganization Administration, General Correspondence, National Archives and Records Administration.

The Prison Industries Reorganization Administration (PIRA) faced numerous challenges in its initial two years. However, the organization made substantial progress, with its small team of technicians and penal professionals being invited by 15 states and the District of Columbia to develop programs for restructuring their prison systems. In carrying out comprehensive surveys of production and consumption, the Bureau of Labor Statistics of the Department of Labor was utilized, while the Procurement Division of the Treasury Department provided architectural and engineering advice. The Works Progress Administration assisted in legal research. This collaborative approach aimed to create a comprehensive understanding of the prison system and develop practical recommendations for improvement.<sup>512</sup>

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<sup>512</sup> United States and Prison Industries Reorganization Administration, *The Prison Labor Problem in New Mexico: A Survey by the Prison Industries Reorganization Administration*. (Washington, D.C.: [Prison Industries Reorganization Administration], 1938); United States and Prison Industries Reorganization Administration, *The Prison Labor Problem in Oklahoma: A Survey by the Prison Industries Reorganization Administration*. (Washington, D.C.: [Prison Industries Reorganization Administration], 1937); United States and Prison Industries Reorganization Administration, *The Prison Labor Problem in Georgia: A Survey by the Prison Industries Reorganization Administration*. (Washington, D.C.: Prison Industries Reorganization Administration, 1937); United States and Prison Industries Reorganization Administration, *The Prison Labor Problem in California: A Survey by the Prison Industries Reorganization Administration*. (Washington, D.C.: Prison Industries Reorganization Administration, 1937); United States and Prison Industries Reorganization Administration, *The Prison Labor Problem in Vermont: A Survey by the Prison Industries Reorganization Administration*. (Washington, D.C.: [Prison Industries Reorganization Administration], 1936); United States and Prison Industries Reorganization Administration, *The Prison Labor Problem in Kentucky: A Survey by the Prison Industries Reorganization*

The PIRA surveys were meticulous, covering a wide range of prison operations. These included the history of prison labor issues within each state, the demographic makeup of the prison populations, the production and facilities within the prisons, the potential for state use of prison labor, and the educational and other related activities within the prisons. Among the most common problems found were idleness, overcrowding, and a lack of rehabilitative penal methods resulting from the lack of useful work

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*Administration*. (Washington, D.C.: [Prison Industries Reorganization Administration], 1936); United States and Prison Industries Reorganization Administration, *The Prison Labor Problem in Oregon: A Survey by the Prison Industries Reorganization Administration*. (Washington, D.C.: Prison Industries Reorganization Administration, 1938); United States and Prison Industries Reorganization Administration, *The Prison Labor Problem in Kansas. a Survey by the Prison Industries Reorganization Administration* (Washington, D. C.: Prison Industries Reorganization Administration, 1938); United States and Prison Industries Reorganization Administration, *The Prison Labor Problem in Wyoming: A Survey* (Washington: The Administration, 1937); United States and Prison Industries Reorganization Administration, *The Prison Labor Problem in West Virginia: A Survey by the Prison Industries Reorganization Administration*. (Washington, D.C.: Prison Industries Reorganization Administration, 1937); United States and Prison Industries Reorganization Administration, *The Prison Labor Problem in Maryland. a Survey. [with Plans.]*. (Washington: Prison Industries Reorganization Administration, 1936); United States and Prison Industries Reorganization Administration, *The Prison Labor Problem in Arkansas a Survey*. (Glen Rock, N.J.: Prison Industries Reorganization Administration, 1936); United States and Prison Industries Reorganization Administration, *The Prison Labor Problem in Kansas: A Survey* (Washington, D. C.: Prison Industries Reorganization Administration, 1938); United States and Prison Industries Reorganization Administration, *The Prison Labor Problem in Delaware: A Survey by the Prison Industries Reorganization Administration* (Washington, D.C.: Prison Industries Reorganization Administration, 1936).

opportunities, vocational training, medical attention, and adequate methods of returning convicted prisoners to society.<sup>513</sup>

The surveys were divided into seven categories, each focusing on a particular aspect of the prison system. These categories included Background and General Considerations, Population of the Prisons, Prison Production and Facilities, Consumption Survey, Education and Allied Activities in Prisons, The Legal Situation, and Probation and Parole. These surveys aimed to provide a comprehensive understanding of the prison system and its various components, leading to recommendations for improvements and more effective operations.

PIRA's efforts led to the implementation of practical recommendations and improvements in multiple states. For instance, constructive legislation was passed in Arkansas, California, Kentucky, Maryland, Oklahoma, and West Virginia, and appropriations for new prison construction were made in California, Kentucky, Maryland, and West Virginia. States implemented state-use systems via PIRA's recommendations through several methods. They restricted the employment of prisoners to the manufacture of goods needed by state departments, institutions, and agencies, prohibited the disposal of prison-made goods on the open market, and enacted legislation compelling all departments, institutions, and agencies of the state and its political subdivisions, supported

wholly or partially by funds, to obtain their needed supplies from prison authorities when available.

In 1936, the American Prison Association (APA) endorsed PIRA's efforts to address the prison labor problem and expressed support for the state-use systems. These systems aimed to regulate the use of prison labor and ensure that it was primarily focused on meeting the needs of state departments, institutions, and agencies. During its annual meeting, the APA officially endorsed the Prison Industries Reorganization Authority (PIRA), commending the creation of PIRA as a wise and forward step in solving the prison labor problem and urging states to cooperate with the organization.

In a press release to the Washington Post from June 21, 1937, it was stated that "the work that is being done by the Prison Industries Reorganization Administration in surveying and trying to improve prison industry systems is tremendously important. The wastage of manpower, the destruction of morale, and the intense suffering caused by enforced idleness in our penitentiaries are distressing to contemplate. For reasons of humanity, apart from all other considerations, jobs ought to be found or invented for every employable prisoner. For those who are to be released before the years of active life are

over, the work should, if possible, be of character to equip them for independent existence."<sup>514</sup>

### ***The Failure of PIRA***

PIRA's existence was time-limited, and when the legislative mandate ended in 1939, it was not renewed. A proposal to allocate \$120,000 for administrative expenses could have extended the agency's lifespan until 1939, but this proposal was rejected.<sup>515</sup> This can be attributed to several factors, including changing political priorities, evolving views on prison labor and rehabilitation, and the perception that PIRA had fulfilled its goals or was no longer necessary.

Despite the moniker of success, the work of the Prison Industries Reorganization Administration (PIRA) was not without its detractors. There were complaints from private manufacturers who believed PIRA's commitment to eliminate competition from existing for-profit prison industries was progressing too slowly. One of the main criticisms of PIRA was its failed progress in fulfilling its promise to eliminate competition from for-profit prison industries.<sup>516</sup>

However, because PIRA could only make recommendations and not enforce

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<sup>514</sup> *Washington Post*, press release, June 21, 1937.

<sup>515</sup> *Congressional Record of the 75th Congress*, vol. 83, 112 vols. (Washington, D. C.: Govt. Print. Off., 1938).

<sup>516</sup> "Journal of Commerce," October 31, 1936, Prison Industries Reorganization Administration, General Correspondence, National Archives and Records Administration.

them, states were not obligated to adhere to their suggestions.<sup>517</sup> This lack of enforcement led to the creation of the National Committee for the Enforcement of Prison Goods Laws by impatient manufacturers. This organization, comprised of leading cotton garment manufacturers, was established to initiate legal action against companies that violated prison labor laws.<sup>518</sup>

Private manufacturing associations did not share PIRA's optimism. PIRA had predicted in 1934 that the cotton garment and other industries would be almost wholly relieved from prison competition within the next two years. The National Work Shirt Manufacturing Association likened this conclusion to a "rosy picture with no basis in reality" and "a futile waste of effort."<sup>519</sup>

By Joseph Ulman's admission, PIRA was less effective in the northern states than in the South, which was not the intended target area. Ulman reported successes in Georgia, Vermont, Maryland, Oklahoma, and Texas, indicating that PIRA was more successful at developing plans for industrial prisons in states without a long-standing history of the contract system, particularly agricultural states.<sup>520</sup> Instead of reorienting for-profit prison systems

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<sup>517</sup> Ibid.

<sup>518</sup> Ibid.

<sup>519</sup> "Daily News Record," 1936, Prison Industries Reorganization Administration, General Correspondence, National Archives and Records Administration.

<sup>520</sup> "Letter from Joseph Ulman to George Radcliff," May 23, 1938, Prison Industries Reorganization Administration, General Correspondence, National Archives and Records Administration.

to state use, PIRA helped establish the industrial operation, ripe for private takeover, in southern prison systems that had not previously had industrialized prison industries.

PIRA's initial mandate extended beyond surveying and making recommendations; it was also intended to provide grants and loans to state prisons to help establish new state-use industries. However, since the passage of the Walsh Healy Act, these funds could not go to state prisons if there was any possibility they could be used for private manufacturing, and these were the prisons that needed funding the most.<sup>521</sup> Furthermore, PIRA officials believed that Congress favored investing capital directly into prisons rather than funding studies.<sup>522</sup>

Following PIRA's disbandment, the Public Works Administration assumed its duties. Many former PIRA staff, including Lewis Robinson, the chair of PIRA, and Howard Gill and James Davies, became involved with the American Prison Association. In 1938, Gill and Robinson met with American Prison Association officials to create a new federal-state committee, which included members of the American Prison Association, the American Association of State Signatories,

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<sup>521</sup> "Statement for Senate Appropriation Committee," 1935, Prison Industries Reorganization Administration, General Correspondence, National Archives and Records Administration.

<sup>522</sup> "Memorandum for Senator Barkley," May 25, 1935, Prison Industries Reorganization Administration, General Correspondence, National Archives and Records Administration.

the Interstate Prison Compact, and the Osborne Association.<sup>523</sup>After PIRA's dissolution, the American Prison Association resolved to "find constructive employment for such unemployed prisoners in production for state use, and educational training academic, vocational, and avocational and in various other ways looking toward the rehabilitation of the criminal."<sup>524</sup>

### ***PIRA's Legacy and the Establishment of UNICOR***

PIRA was established with the goal of reorganizing the prison labor system in the United States. The organization's focus was on rehabilitation and training of inmates, fair competition between prison industries and the private sector, and the structuring of prison industries for efficiency and productivity. However, despite its efforts, PIRA was unable to find a viable alternative to for-profit prison labor, which arguably led to the creation of federally operated for-profit prison industries.

PIRA's failure is in the numbers. By 1937, only 19% of American prisoners were working, while PIRA had promised a number closer to 50%.<sup>525</sup> M.Q.

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<sup>523</sup> "Louis Robinson and Howard Gill Speeches," n.d., Prison Industries Reorganization Administration, General Correspondence, National Archives and Records Administration.

<sup>524</sup> "The Congress Bulletin: A Message From the President to the Membership of the American Prison Association," November 1937, Prison Industries Reorganization Administration, General Correspondence, National Archives and Records Administration.

<sup>525</sup> "Labor Distribution of 1850,000 Wards of Penal Systems," 1937, Prison Industries Reorganization Administration, General Correspondence, National Archives and Records Administration.

McDonald, general counsel for the National paint varnish and Lacquer Association of New York, shared his thoughts on the matter: "it seems to me that mere state-use is not the answer to the whole problem."<sup>526</sup> Not only did PIRA not find a solution for prisoner unemployment, but their recommendations hurt specific free industries, such as those that provided prison industries with raw materials were suffering.

PIRA's focus on rehabilitation and training of inmates likely influenced the approach of UNICOR, also known as Federal Prison Industries (FPI), which is a U.S. government-owned corporation that was established in 1934. Upon UNICOR's founding, Congress implemented a policy of "individualized custody, discipline, treatment, and training for offenders committed to Federal institutions..."<sup>527</sup> Its creation was an attempt to address the issues related to the prison labor system, as well as to provide meaningful employment opportunities for inmates, thereby reducing recidivism. Both UNICOR and PIRA aimed to provide inmates with vocational training and employment opportunities to prepare them for successful reentry into society. However, just like private

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<sup>526</sup> "Letter to Margaret Collins from Council McDonald," April 26, 1938, Prison Industries Reorganization Administration, General Correspondence, National Archives and Records Administration.

<sup>527</sup> Department of Justice, "Bulletin No. 175," November 14, 1934, Prison Industries Reorganization Administration, Burton Oppenheim Papers, National Archives and Records Administration.

interests had exploited vocational systems focused on rehabilitation in the past, so has UNICOR.

The move back toward for-profit manufacturing in state prisons was bolstered by the Second World War when state-use prison factories were busier than ever, and some states' prisoners were released during the day to work in non-prison factories. However, at the War's conclusion, most state prisons again found a severe shortage of viable jobs, leading to a resurgence in for-profit prison labor. Exacerbating the post-war prison labor crisis was a boom in the state and federal prison populations. Not only did prisons lack the capacity to give all inmates jobs, but also, most prisons' physical space became inadequate to house their growing populations. As such, prison administrators turned to the private contract system as a financial and spatial release valve.

In the 1950s and 1960s, criminologists, politicians, and prison administrators shifted their attention toward concerns over recidivism—or, more simply, a person's return to jail after incarceration. Speaking about the Prisoner Rehabilitation Act of 1965, which established work release programs in the Federal Penitentiary system, President Lyndon B. Johnson said, "We cannot tolerate an endless, self-defeating cycle of imprisonment, release, and reimprisonment...We must find ways to help the first offender avoid a continuing career of crime." While the problems of overcrowding—and a critical public eye upon mass incarceration—likely engendered this new focus, its new discourse

about the potential of prison work for rehabilitation. There was a new concern regarding societal integration for prisoners, and labor—often in the form of work release or the private contract system—once again became the dominant tool of rehabilitation. In 2023, UNICOR operated 83 factories in federal prisons across the United States, employing about 12,000 inmates. More importantly, it provides examples of the thousands of state and county prisons across the nation.

Since the eighteenth century, labor has been the cornerstone of the American penal system, and along with walls, bars, and gates, it has remained a constant staple in the prisoner experience. Although its use is ubiquitous throughout time, the story of prison labor is complex and dynamic. The practice's and reception have varied dramatically over time and over space. It has survived because of its ability to cater to the needs and desires of each succeeding generation of prison administrators, capitalists, politicians, and the public. In other ways, the story has come full circle. What started as a practice focused on punishment, deterrence, and capital greed seems to have ended up the same.

## CONCLUSION—SHOULD PRISONERS WORK?

The relationship between work and punishment "...is as old as the story of Adam, on whom God laid the penalty of work for disobedience."<sup>528</sup>

--Louis N. Robinson

Prisons, jails, and correctional facilities across the country, from federal to state, county, and municipal levels, persistently implement prison labor programs. Under these programs, an array of private businesses, including manufacturers, retailers, distributors, and service providers, benefit from hundreds of thousands of inmates' labors, often at a fraction of the cost of employing a non-incarcerated citizen. Given the contentious and controversial nature of this carceral practice over the past two centuries, we might ask why prisoners continue to work in the United States. The answer, while complex and requiring an understanding of the intersections of various factors, including economic, societal, and political considerations, can be boiled down to a single supposition. Labor is, and has always been, a foundational feature of American

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<sup>528</sup> Louis N Robinson, *Should Prisoners Work? A Study of the Prison Labor Problem in the United States*, (Chicago: John C. Winston Co., 1931), i.

imprisonment. Labor is as much a part of the prison apparatus as bars, walls, and cells.

The reason labor has remained integral to the prison experience is due to its ability to serve a variety of needs that have been consistent throughout the history of imprisonment, namely rehabilitation, financial self-sufficiency, and administrative control. While labor has served these needs over time, the needs themselves have not remained static. Indeed, prison labor has thrived and survived in America's prisons because of its flexibility as a tool for reform, capital, and control.

While it is undeniable that economic interests have been a significant driving force behind the prison labor programs, it would be an oversimplification to state that financial gain is the only reason for the perpetuation of this practice. The narrative of prison labor is much more multifaceted, extending beyond mere economic considerations. Other factors, including religion, societal attitudes towards punishment and rehabilitation, political agendas, and the administrative needs of the prison, have all played a significant role. Over time, prison labor has served as a source of discipline, a deterrent from crime, or a means of instilling work ethics and skills that could potentially aid in an inmate's reintegration into society post-release. Prison labor has served as a practical solution to the logistical and operational challenges faced by prison administrators and policymakers, and it has allowed inmates the ability to offset

the expense of maintenance and operation of the facilities. In essence, the continued implementation of prison labor is a complex issue, influenced by a myriad of factors beyond just capital interest. Its persistence in the American penal system is a testament to its adaptability and enduring relevance despite the evolving societal, political, and economic landscapes.

Imprisonment and prison labor are inseparable as they have developed simultaneously and in concert with one another. Prison labor would not be possible without the apparatus of the prison, and imprisonment would be impractical without the use of labor. This relationship began as an American invention of the eighteenth century, with what initially started as a method centered on corporal punishment, deterrence, and financial compensation. At the start of the nineteenth century, religious doctrines, which perceived crime as an inherited and incurable trait, gave way to theories of environmentalism and Social Darwinism. Reformers began to adopt penal programs that aimed to comprehend and remedy criminal behavior through an individualized approach. The reformists' emphasis on personal treatment, environmental influences, and post-conviction was at odds with the prevailing prison labor system, which exploited prisoners indiscriminately for the benefit of others.

The brutality of the labor system did not end, however. Throughout the second half of the nineteenth century, administrators exploited labor as a rigid tool of control and punishment. Prisoners were subjected to grueling work

hours, often under harsh conditions, with little to no regard for their well-being. Furthermore, many private contractors took advantage of this system for their financial gain, effectively turning the prisons into a source of cheap labor. This practice exploited the prisoners and undermined the supposed goal of prisoner reform as the focus shifted from rehabilitation to profit.

At the same time, a new wave of prison reformers, "Reformists," was deeply critical of the contract system. More and more professional prison administrators, lawmakers, and well-informed criminologists were acknowledging the unjust suffering of American prisoners, attributing it to the greed of capitalism and society's demand for physical, mental, and spiritual punishment. Their goal was to challenge and transform the existing penal practices by advocating for a novel system of criminal treatment that emphasized their new reformatory goals. The reformists aimed to supplant punitive and dogmatic methods with flexible rehabilitation programs designed to reintegrate prisoners into society as productive citizens.

The cries of these reformists, along with their alliance with strong political groups and trade unions, upset the existing contract system across the American North, plunging the prison system into a "crisis of imprisonment." At first, the lack of funding and limited work made operating prison factories fiscally unfeasible. Over the next few years, however, the absence of private contracts turned into an opportunity for prison administrators to create a new system of

labor that gave them greater control over prisoner activities and industrial profits. A new "state-use contract" system put prisoners to work making goods for state consumption, first in New York and then across the country. As the state-use system took form between 1895 and 1910, penal labor not only survived in the United States, but it encompassed more prisoners than ever and served as the basis for prisoner rehabilitation, discipline, and education throughout the twentieth century.

Like the state-use system, work release helped maintain labor as a foundational system in American jails and prisons while those systems were in the national prison crisis known as the "prison labor problem." These systems, which we will collectively refer to as "work release," were a significant change within the landscape of American prisons between the 1900s and the 1920s. In fact, this alternative system was relatively weak compared to the traditional contract system. The Federal Government's attempts to find financially sustainable work programs as suitable substitutes for the high-profit contract system highlighted this weakness. The alternative system that the Federal Government adopted was more similar to the brutal contract system than the spirit of Progressive-Era work programs. Today, the Federal prison system, along with several states, operates state-run, for-profit prison industries. These industries offer private parties a significant source of financial gain and provide prison administrators with the most effective and reliable tool of control: labor.

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